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WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 75, No. 149

Wednesday, August 4, 2010

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See National Institute of Food and Agriculture
See Natural Resources Conservation Service
See Rural Business-Cooperative Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46899

Animal and Plant Health Inspection Service
PROPOSED RULES
Lacey Act Implementation Plan; Definitions for Exempt and Regulated Articles, 46859–46861
NOTICES
Changes to Treatments for Sweet Cherries from Australia and Irradiation Dose for Mediterranean Fruit Fly, 46901–46902

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46942–46943
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 46952

Centers for Medicare & Medicaid Services
NOTICES
Meetings:
Medicare Program; Listening Session Regarding Confidential Feedback Reports, etc., 46948–46949

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Drug Enforcement Administration
NOTICES
Manufacturer of Controlled Substances; Applications:
Johnson Matthey Pharma Services, North Andover, MA, 47029

Education Department
NOTICES
Meetings:
National Assessment Governing Board; Correction, 46918

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Pesticide Tolerances:
Halosulfuron–methyl, 46847–46854
Revisions to the California State Implementation Plan:
South Coast Air Quality Management District, 46845–46847
PROPOSED RULES
Approvals and Promulgations of Implementation Plans:
Extension of Attainment Date for Charlotte–Gastonia–Rock Hill, NC–SC, etc., 46881–46884
Revisions to the California State Implementation Plan:
South Coast Air Quality Management District, 46880–46881
NOTICES
Nominations to FIFRA Scientific Advisory Panel; Request for Comments, 46919–46924
Receipt of Pesticide Petitions:
Residues of Pesticide Chemicals in or on Various Commodities, 46924–46926
Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations, 46926–46936

Federal Aviation Administration
RULES
Special Conditions:
Bombardier Inc. Model CL–600–2E25 Series Airplane; Passenger Seats with Non-Traditional, Large, Non-Metallic Panels, 46840–46843
Embraer ERJ 190 100 Series Airplane Seats with Non-Traditional, Large, Non-Metallic Panels, 46838–46840
PROPOSED RULES
Airworthiness Directives:
Airbus Model A318–111 and A318–112 Airplanes and Model A319, A320, and A321 Series Airplanes, 46873–46877
Airbus Model A330–200 and –300 Series Airplanes, 46861–46864
Boeing Co. Model 747 and Model 767 Airplanes Equipped with General Electric Model CF6–80C2 or CF6–80A Series Engines, 46868–46873
Short Brothers PLC Model SD3 Airplanes, 46864–46868

Federal Communications Commission
RULES
Amateur Radio Service Communications During Government Disaster Drills; Amendments, 46854–46858
PROPOSED RULES
Review of Personal Radio Services Rules, 47142–47169
Satellite Television Extension and Localism Act of 2010, 46885–46894
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46936–46937

Federal Energy Regulatory Commission
NOTICES
Applications for License Amendments:
Gresham Municipal Utilities, 46918–46919
Filings:
MidAmerican Energy Co., 46919

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Warren County IA; Rescind Notice, 47059

Federal Maritime Commission
NOTICES
Agreements Filed, 46938
Ocean Transportation Intermediary License; Applicants, 46938–46939
Ocean Transportation Intermediary Licenses; Revocations, 46939–46940

Federal Reserve System
RULES
Truth in Lending, 46837–46838
NOTICES
Changes in Bank Control:
Acquisitions of Shares of Banks or Bank Holding Companies, 46937
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 46937–46938
Proposals to Engage in Permissible Nonbanking Activities, etc., 46938

Federal Trade Commission
NOTICES
Proposed Consent Agreements:
Nufarm Limited, 46940–46942

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
90-Day Finding on Petition to List Mexican Gray Wolf as Endangered Subspecies with Critical Habitat, 46894–46898
NOTICES
Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of Five Listed Species:
Delmarva Peninsula fox squirrel, northeastern bulrush, Furbish lousewort, Chittenango ovate amber snail, and Virginia round-leaf birch, 47025–47026

Food and Drug Administration
NOTICES
Prescription Drug User Fee Rates for Fiscal Year 2011, 46952–46957

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
In-Depth Case Studies of Advanced Modernization Initiatives, 46899–46901

Foreign-Trade Zones Board
NOTICES
Minor Adjustments to Optional Alternative Site Framework, 46916
Site Renumbering:
Foreign-Trade Zone 153, San Diego, CA, 46917–46918

Forest Service
NOTICES
Meetings:
Forestry Research Advisory Council, 46903
Ketchikan Resource Advisory Committee, 46902
West Virginia Resource Advisory Committee, 46902–46903

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46944–46945
Meetings:
Advisory Commission on Childhood Vaccines, 46952
Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, 46947–46948

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Research Plan for an Evaluation of the Section 202 Demonstration Planning Grant Program, 46957–46958
Proposed Fair Market Rents for the Fiscal Year 2011 Housing Choice Voucher Program, etc., 46958–47024

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements, etc.; Corrections, 46844–46845
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47059–47060
Meetings:
Area 1 Taxpayer Advocacy Panel, 47060–47061
Area 2 Taxpayer Advocacy Panel, 47062
Area 3 Taxpayer Advocacy Panel, 47061
Area 5 Taxpayer Advocacy Panel, 47061
Area 7 Taxpayer Advocacy Panel, 47061
Taxpayer Advocacy Panel Taxpayer Assistance Center Committee, 47062

International Trade Administration
NOTICES
Amended Final Determinations of Sales at Less Than Fair Value:
Certain Woven Electric Blankets from People's Republic of China, 46911–46912
Application(s) for Duty-Free Entry of Scientific Instruments, 46912
Final Results of Changed Circumstances Reviews:
Certain New Pneumatic Off-the-Road Tires from People's Republic of China, 46914–46916
Partial Rescissions of Antidumping Duty Administrative Reviews:
New Pneumatic Off-the-Road Tires from People's Republic of China, 46917

International Trade Commission
NOTICES
Investigations:
Certain Devices Having Elastomeric Gel and Components Thereof, 47027–47028

Justice Department
See Drug Enforcement Administration
NOTICES
Lodging of Consent Decrees under CERCLA, 47028–47029

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47029

Land Management Bureau
NOTICES
Filing of Plats of Survey:
Montana, 47026

National Archives and Records Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47029–47030

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 47030

National Institute of Food and Agriculture
NOTICES
Solicitation of Input from Stakeholders:
Assessments Focused on Improving Food Aid and Providing Safe Water, 46909–46910

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46945
Assessing the Long-Term Impacts of the John E. Fogarty International Center Research and Training Programs, 46946–46947
Multi-Ethnic Study of Atherosclerosis Event Surveillance, 46945–46946
Meetings:
Center for Scientific Review, 46950–46951
National Eye Institute, 46951–46952
National Human Genome Research Institute, 46951
National Institute of Environmental Health Sciences, 46950
National Institute on Alcohol Abuse and Alcoholism, 46949

National Oceanic and Atmospheric Administration
NOTICES
Draft 2010 Marine Mammal Stock Assessment Reports, 46912–46914

National Park Service
NOTICES
Meetings:
Cedar Creek and Belle Grove National Historical Park Advisory Commission, 47026
Denali National Park and Preserve Aircraft Overflights Advisory Council, Alaska Region, 47027

National Science Foundation
NOTICES
Meetings; Sunshine Act, 47030

Natural Resources Conservation Service
NOTICES
Proposed Changes to the National Handbook of Conservation Practices, 46903–46904

Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46910–46911

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47030–47031
Excepted Service, 47031–47033
Meetings:
National Council on Federal Labor–Management Relations, 47033

Postal Regulatory Commission
NOTICES
New Postal Products, 47033–47034

Rural Business-Cooperative Service
NOTICES
Request For Proposals:
Fiscal Year 2010 Funding Opportunity for Research on the Economic Impact of Cooperatives (REIC), 46904–46909

Securities and Exchange Commission
PROPOSED RULES
Mutual Fund Distribution Fees; Confirmations, 47064–47139
NOTICES
Applications for Deregistration under Section 8(f) of 1940 Investment Company Act, 47036–47038
Meetings; Sunshine Act, 47038
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 47043–47045
Chicago Board Options Exchange, Inc., 47041–47043
EDGA Exchange, Inc.., 47056–47057
EDGX Exchange, Inc., 47040–47041
International Securities Exchange, LLC, 47054–47056
NASDAQ Stock Market LLC, 47053–47054, 47057–47059
National Stock Exchange, Inc., 47049–47051
NYSE Arca, Inc., 47045–47049, 47051–47053
OneChicago, 47039–47040

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47034–47035
Disaster Declarations:
Iowa, 47035–47036
Kentucky, 47036
South Dakota, 47035
Small Business Size Standards:
Waiver of Nonmanufacturer Rule, 47036

State Department
RULES
Amendment to the International Traffic in Arms Regulations:
Commodity Jurisdiction, 46843–46844

Substance Abuse and Mental Health Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46943–46944

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Pennsylvania Regulatory Program, 46877–46880
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47024–47025

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Advisory Committee on Disability Compensation, 47062

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 47064–47139

Part III
Federal Communications Commission, 47142–47169

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

357 46859

12 CFR

226 46837

14 CFR

25 (2 documents) 46838, 46840

Proposed Rules:

39 (4 documents) 46861, 46864, 46868, 46873

17 CFR

Proposed Rules:

210 47064
239 47064
240 47064
249 47064
270 47064
274 47064

22 CFR

120 46843

26 CFR

53 46844
54 46844

30 CFR

Proposed Rules:

938 46877

40 CFR

52 46845
180 46847

Proposed Rules:

52 46880
81 46881

47 CFR

97 46854

Proposed Rules:

1 47142
27 47142
73 46885
95 47142

50 CFR

Proposed Rules:

17 46894

Rules and Regulations

Federal Register
Vol. 75, No. 149
Wednesday, August 4, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1389]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index as reported on June 1. The adjusted dollar amount for 2011 is $592.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Dana Miller, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board published amendments to Regulation Z implementing HOEPA, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA requirements if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. 15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii). The Board adjusted the $400 amount to $579 for the year 2010.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 87 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 19, 2010, was the CPI–U index in effect on June 1, and reflects the percentage change from April 2009 to April 2010. The adjustment to the $400 figure below reflects a 2.2 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

The fee trigger being adjusted in this **Federal Register** notice pursuant to TILA section 103(aa) is used in determining whether a loan is covered by section 226.32 of Regulation Z. Such loans have generally been known as "HOEPA loans." In July 2008, the Board revised Regulation Z to adopt additional protections for "higher-priced" loans, using its authority under TILA section 129(l)(2). Those revisions define a class of dwelling-secured transactions, described in section 226.35 of Regulation Z, using a threshold based on average market rates that the Board publishes on a regular basis. The adjustment published today does not affect the triggers adopted in July 2008 for higher-priced loans.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Reform Act") was enacted into law.[1] Section 1431 of the Reform Act revises the statutory fee trigger for HOEPA loans. The amendments made by Section 1431 of the Reform Act will be implemented in a future rulemaking. Accordingly, the adjustment to the fee trigger that is being published today will become effective on January 1, 2011 and will apply for one year, or until final rules under the Reform Act become effective, whichever is earlier.

II. Adjustment and Commentary Revision

Effective January 1, 2011, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $592 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2011. Because the timing and method of the adjustment are set by statute, the Board finds that notice and public comment on the change are unnecessary.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment to Regulation Z will not have a significant economic impact on a substantial number of small entities. The only change is to increase the threshold for transactions requiring HOEPA disclosures. This change is mandated by statute.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. In Supplement I to Part 226, under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* under Paragraph 32(a)(1)(ii), paragraph 2.xvi. is added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. *Annual adjustment of $400 amount.*

* * * * *

xvi. For 2011, $592, reflecting a 2.2 percent increase in the CPI–U from June 2009 to June 2010, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, July 29, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–19101 Filed 8–3–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM430; Special Conditions No. 25–408–SC]

Special Conditions: Embraer ERJ 190–100 Series Airplane Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer ERJ 190–100 series airplane. This airplane will have novel or unusual design features that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 29, 2010. We must receive your comments by September 3, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM430, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM430. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2768; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Seats With Non-Traditional, Large, Non-Metallic Panels

The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure consistent ruling for the aviation industry.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 9, 2010, Embraer applied for a change to Type Certificate No. A57NM for a new interior arrangement of 112 slim passenger seats in the ERJ 190–100 STD, ERJ 190–100 LR, and ERJ

190–100 IGW. The Embraer ERJ 190–100 series airplanes, currently approved under Type Certificate No. A57NM, are low-wing, conventional-tail, twin-turbofan, transport-category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A57NM do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then-recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, their contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat-release and smoke-emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead-stowage-bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14 Code of Federal Regulations (CFR), part 25, Appendix F, parts IV and V, heat-release and smoke-emission requirements.

Type Certification Basis

Under the provisions of § 21.101 Embraer must show that the ERJ 190–100, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A57NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in A57NM are as follows: Part 25, as amended by Amendment 25–1 through Amendment 25–101. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the ERJ 190–100 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the ERJ 190–100 must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36;

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The ERJ 190–100 series aircraft will incorporate the following novel or unusual design features: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport-category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established. The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. To provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions, required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: Seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas, and associated furniture. Examples of traditional exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds.

Clarification of "Exposed"

"Exposed" is considered to include panels that are directly exposed to the passenger cabin in the traditional sense, and panels that are enveloped, such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with §§ 25.853(a) and 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s, the Federal Aviation Administration (FAA) conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, the FAA adopted new standards for interior surfaces associated with larger-surface-area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash, fire-survival time. The materials that comply with the standards (i.e., § 25.853, titled "Compartment Interiors," as amended by Amendments 25–61 and 25–66) extended survival time by approximately 2 minutes over materials that do not comply.

At the time Amendment 25–61 was written, the potential application of the requirement to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and included only small amounts of non-metallic materials (for example, a food-tray table and armrest closeout). It was determined that the overall effect on survivability was negligible, whether or not these panels met the heat-release and smoke-emission requirements. The requirements therefore did not address seats, and the preambles to both Notice of Proposed Rule Making (NPRM) 85–10 and the final rule (Amendment 25–61) specifically noted that they were excluded "because the recently-adopted

standards for flammability of seat cushions will greatly inhibit involvement of the seats."

In the late 1990s, when it became clear that seat designs were evolving to include large non-metallic panels with surface areas that would impact survivability during a cabin-fire event compared to partitions or galleys, the FAA issued Policy Memorandum 97–112–39. This memo noted that large-surface-area panels must comply with heat-release and smoke-emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs would have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin-fire event.

Applicability

As discussed above, these special conditions are applicable to the ERJ 190–100. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

As discussed above, these special conditions are applicable to Embraer ERJ 190–100 series airplanes. It is not our intent, however, to require seats with non-traditional, large, non-metallic panels to meet § 25.853, which calls out appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Because the heat-release and smoke-emission testing requirements of § 25.853, per appendix F, parts IV and V, are not part of the type-certification basis of the Model ERJ 190–100, these special conditions are only applicable if the Model ERJ 190–100 series airplanes are in 14 CFR part 121 operations. Section 121.312 requires compliance with the heat-release and smoke-emission testing requirements of § 25.853, for certain airplanes, irrespective of the type-certification bases of those airplanes. For Model ERJ 190–100 series airplanes, these are the airplanes that would be affected by these special conditions. Should Embraer apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A57NM, to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model-series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the return-to-service date for the Embraer ERJ 190–100 series airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Embraer ERJ 190–100 series airplanes.

1. Except as provided in paragraph 3 of these special conditions, compliance with 14 CFR part 25, appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may be either a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition (1), above. A triple-seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (e.g., outboard-seat place 1 square foot; middle, 1 square foot; and inboard, 2.5 square feet).

3. Seats do not have to meet the test requirements of 14 CFR part 25, appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or fewer,

b. Airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and

c. Airplanes exempted from § 25.853, Amendment 25–61 or later.

Issued in Renton, Washington, on June 29, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19071 Filed 8–3–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM431; Special Conditions No. 25–409–SC]

Special Conditions: Bombardier Inc. Model CL–600–2E25 Series Airplane; Passenger Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Inc. Model CL–600–2E25 Series Airplane. These airplanes will have a novel or unusual design feature associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 27, 2010. We must receive your comments by September 20, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM431, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM431. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2195;

facsimile (425) 227–1232; e-mail *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of and opportunity for prior public comment on these special conditions is impracticable and would significantly delay issuance of the design approval and thus delivery of the affected aircraft. The substance of these special conditions has previously been subject to the public-comment process and received no substantive comments. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On February 28, 2007, Bombardier Inc., 400 Cote Vertu West, Dorval, Quebec, Canada, H4S 1Y9, applied for an amended type certificate for the Bombardier Model CL–600–2E25 airplane to be identified on Type Certificate Data Sheet (TCDS) No. A21EA. The Model CL–600–2E25 series airplane will be a swept-wing, T-tail, twin-engine, fuselage-mounted turbofan-powered, single-aisle, medium-sized, transport-category airplane.

The applicable airplane regulations, currently approved under Title 14, Code of Federal Regulations (14 CFR) part 25, do not require seats to meet the more-stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then-recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat-release and smoke-emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of part 25, Appendix F, parts IV and V, heat-release and smoke-emission requirements.

Type Certification Basis

Under provisions of 14 CFR 21.17, Bombardier must show that the Model CL–600–2E25 series airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–119. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model CL–600–2E25 airplane because of a novel or unusual design feature, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model CL–600–2E25 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Model CL–600–2E25 series airplanes will incorporate the following novel or unusual design feature: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of occupants of the cabin in the event of fire. These seats are considered a novel design for transport-category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels. To provide a level of safety equivalent to that provided by the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions, required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

Definition of "Non-Traditional, Large, Non-Metallic Panel"

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: seat backs, bottoms and leg/foot rests, kick panels, back shells, and credenzas and associated furniture. Examples of traditional exempted parts of the seat include: arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, and video monitors and shrouds.

Clarification of "Exposed"

"Exposed" is considered to include those panels directly exposed to the passenger cabin in the traditional sense, plus those panels enveloped such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions.

These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s, the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, the FAA adopted new standards for interior surfaces associated with large-surface-area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire-survival time. Materials that comply with the standards (*i.e.,* § 25.853 entitled "Compartment interiors" as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written, the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and contained only small amounts of non-metallic materials. The FAA determined that the overall effect on survivability was negligible, whether or not the food trays met the heat-release and smoke requirements. The requirements, therefore, did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985), and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded "because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats."

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size:

> It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, "Guidance for Flammability Testing of Seat/Console Installations," October 17, 1997 (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large, non-metallic panels with surface areas that would impact survivability during a cabin-fire event, comparable to partitions or galleys. The memo noted that large-surface-area panels must comply with heat-release and smoke-emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October 2004, the FAA examined the appropriate flammability standards for passenger seats installed on transport-category airplanes that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The FAA reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat-release and smoke-emissions requirements. The FAA has determined that special conditions would be issued to apply the standards defined in § 25.853(d) to seats with large, non-metallic panels in their design.

Applicability

Because the heat-release and smoke-emission testing requirements of § 25.853 are part of the type certification basis for the Model CL–600–2E25 series airplane, these special conditions are applicable to the Model CL–600–2E25 series airplane. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Seats do not have to meet these special conditions when installed in compartments that are not otherwise required to meet the test requirements of part 25, Appendix F, parts IV and V. This includes, for example, airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and those airplanes that do not need to comply with the requirements of § 121.312.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Inc. Model CL–600–2E25 series airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Inc. Model CL–600–2E25 series airplane.

1. Except as provided in special condition number 3, below, compliance with heat-release and smoke-emission testing requirements per § 25.853, and Appendix F, parts IV and V, is required for seats that incorporate non-traditional, large, non-metallic panels that may be either a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition number 1, above. A triple-seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (*e.g.,* outboard seat place, 1 square foot; middle, 1 square foot; and inboard, 2.5 square feet).

3. Seats do not have to meet the test requirements of part 25, Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and do not need to comply with the requirements of § 121.312, and

c. Airplanes exempted from § 25.853, Amendment 25–61 or later.

4. Only airplanes associated with new seat-certification programs approved after the effective date of these special conditions will be affected by the requirements in these special conditions. Previously certificated interiors on the existing airplane fleet, and follow-on deliveries of airplanes with previously certificated interiors, are not affected.

Issued in Renton, Washington, on July 27, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19072 Filed 8–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 120

RIN 1400–AC63

[Public Notice: 7075]

Amendment to the International Traffic in Arms Regulations: Commodity Jurisdiction

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to address electronic submission of a request for a commodity jurisdiction determination using "Commodity Jurisdiction (CJ) Determination Form" (Form DS–4076).

DATES: *Effective Date:* This rule is effective August 4, 2010.

FOR FURTHER INFORMATION CONTACT: Director Charles Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2792 or Fax (202) 261–8199; E-mail *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Part 120.

SUPPLEMENTARY INFORMATION: A new form entitled "Commodity Jurisdiction (CJ) Determination Form" (Form DS–4076) has been added to the listing of forms at 22 CFR 120.28(a)(8). This form was made available via the Directorate of Defense Trade Controls' (DDTC) Web site (*http://www.pmddtc.state.gov*) for public use on a trial basis (as well as comment) on September 30, 2009. As already noted in form DS–4076, information contained in the description block (Block 5) (exclusive of information legitimately identified as proprietary in Block 15) will be used in DDTC's published Commodity Jurisdiction determinations list, to be available on the DDTC Web site. Also, 22 CFR 120.4(a) is amended to state that the "Commodity Jurisdiction (CJ) Determination Form" must be electronically submitted to DDTC. For twenty-nine (29) days after the effective date of this final rule, a request for a commodity jurisdiction determination may be submitted electronically or via a paper format. After thirty (30) days from the effective date of this final rule, electronic submission via the "Commodity Jurisdiction (CJ) Determination Form" (Form DS–4076) will be mandatory. Additionally, § 120.4(c) was amended to eliminate the instruction to submit seven collated sets of supporting documentation.

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since this amendment involves a foreign affairs function of the United States, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to his rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment 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, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Executive Order 12988

The Department of State has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This collection was approved under OMB Control Number 1405–0163. This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 120 is amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

■ 2. Section 120.4 is amended by revising paragraphs (a) and (c) to read as follows:

§ 120.4 Commodity jurisdiction.

(a) The commodity jurisdiction procedure is used with the U.S. Government if doubt exists as to whether an article or service is covered by the U.S. Munitions List. It may also be used for consideration of a redesignation of an article or service currently covered by the U.S. Munitions List. The Department must provide notice to Congress at least 30 days before any item is removed from the U.S. Munitions List. Upon electronic submission of a Commodity Jurisdiction (CJ) Determination Form (Form DS–4076), the Directorate of Defense Trade Controls shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List. The determination, consistent with §§ 120.2, 120.3, and 120.4, entails consultation among the Departments of State, Defense, Commerce, and other U.S. Government agencies and industry in appropriate cases.

* * * * *

(c) Requests shall identify the article or service, and include a history of this product's design, development, and use. Brochures, specifications, and any other documentation related to the article or service should be submitted as electronic attachments per the instructions for Form DS–4076.

* * * * *

■ 3. Section 120.28 is amended by adding paragraph (a)(8) to read as follows:

§ 120.28 Listing of forms referred to in this subchapter.

* * * * *

(a) * * *

(8) Commodity Jurisdiction (CJ) Determination Form (Form DS–4076).

* * * * *

Dated: July 15, 2010.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2010–19136 Filed 8–3–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53 and 54

[TD 9492]

RIN 1545–BG18

Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains correcting amendments to IRS regulations providing guidance under 4965 of the Internal Revenue Code, relating to entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties; sections 6033(a)(2) and 6011(g), relating to certain disclosure obligations with respect to such transactions; and sections 6011 and 6071, relating to the requirement of a return and time for filing with respect to section 4965 taxes. These errors were made when the agency published final regulations (TD 9492) in the **Federal Register** on Tuesday, July 6, 2010 (75 FR 38700).

DATES: This correction is effective on August 4, 2010, and is applicable on July 6, 2010.

FOR FURTHER INFORMATION CONTACT: For questions concerning these regulations, contact Benjamin Akins at (202) 622–1124 or Michael Blumenfeld at (202) 622–6070. For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Cathy Pastor at (202) 622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9492) that are the subject of this document are under sections 4965, 6011 and 6071 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9492) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR parts 53 and 54 are corrected by making the following correcting amendments:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read in part as follows:

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

■ **Par. 2.** Section 53.4965–2 is amended by revising paragraphs (c)(6)(i) and (c)(6)(i)(C) to read as follows:

§ 53.4965–2 Covered tax-exempt entities.

* * * * *

(c) * * *

(6) * * *

(i) Individual retirement plans defined in section 408(a) and (b), including—

(A) * * *

(B) * * *

(C) Deemed individual retirement accounts or annuities (IRAs) qualified under a qualified plan (deemed IRAs) under section 408(q); and

* * * * *

■ **Par. 3.** Section 53.4965–5 is amended by revising the first sentence of paragraph (c)(4) *Example* to read as follows:

§ 53.4965–5 Entity managers and related definitions.

* * * * *

(c) * * *

(4) * * *

Example. In a sale-in, lease-out (SILO) transaction described in Notice 2005–13 (2005–1 CB 630), X, which is a non-plan entity, has purported to sell property to Y, a taxable entity and lease it back for a term of years. * * *

* * * * *

■ **Par. 4.** Section 53.4965–8 is amended by revising the first sentence of paragraph (e) and the second sentence of paragraph (f) *Example 1.* (iii) to read as follows:

§ 53.4965–8 Definition of net income and proceeds and standard for allocating net income or proceeds to various periods.

* * * * *

(e) *Allocation to pre-and post-listing periods.* If a transaction other than a

prohibited reportable transaction (as defined in section 4965(e)(1)(C) and § 53.4965–3(a)(2)) to which the tax-exempt entity is a party is subsequently identified in published guidance as a listed transaction during a taxable year of the entity (the listing year) in which it has net income or proceeds attributable to the transaction, the net income or proceeds are allocated between the pre- and post-listing periods. The IRS will treat the period beginning on the first day of the listing year and ending on the day immediately preceding the date of the listing, and the period beginning on the date of the listing and ending on the last day of the listing year as short taxable years. * * *

(f) * * * *Example 1.* * * *

(iii) * * * The $14M fee received in 1999, which constitutes proceeds of the transaction, is likewise allocated to that tax year. * * *

* * * * *

■ **Par. 5.** Section 53.6071–1 is amended by revising paragraph (g)(3) to read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(g) * * *

(3) *Transition rule.* A Form 4720, for a section 4965 tax that was due on or before October 4, 2007, will be deemed to have been filed on the due date if it was filed by October 4, 2007, and if all section 4965 taxes required to be reported on that Form 4720 were paid by October 4, 2007.

* * * * *

PART 54—PENSION EXCISE TAXES

■ **Par. 6.** The authority citation for part 54 continues to read in part as follows:

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

■ **Par. 7.** Section 54.6011–1 is amended by revising paragraph (c)(2) to read as follows:

§ 54.6011–1 General requirement of return, statement or list.

* * * * *

(c) * * *

(2) *Transition rule.* A Form 5330, "Return of Excise Taxes Related to Employee Benefit Plans," for an excise tax under section 4965 that was due on or before October 4, 2007, will be deemed to have been filed on the due date if it was filed by October 4, 2007, and if the section 4965 tax that was required to be reported on that Form 5330 was paid by October 4, 2007.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2010–19097 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0503; FRL–9183–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from natural gas-fired, fan-type central furnaces and other miscellaneous NO_X sources. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 4, 2010 without further notice, unless EPA receives adverse comments by September 3, 2010. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0503, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

Table of Contents

I. The State's Submittal
  A. What rules did the State submit?
  B. Are there other versions of these rules?
  C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action
  A. How is EPA evaluating the rules?
  B. Do the rules meet the evaluation criteria?
  C. EPA Recommendations to Further Improve the Rules
  D. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1111	Reduction of NO_X Emissions from Natural Gas-Fired, Fan-Type Central Furnaces.	11/06/09	05/17/10
SCAQMD	1147	NO_X Reductions from Miscellaneous Sources	12/05/08	05/17/10

On June 8, 2010, EPA determined that the submittal for SCAQMD Rules 1111 and 1147 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of Rule 1147 in the SIP, nor are there earlier versions of this Rule adopted. We approved an earlier version of Rule 1111 into the SIP on May 3, 1984 (49 FR 18830).

C. What is the purpose of the submitted rules?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Rule 1111 limits NO_X emissions from natural gas-fired, fan-type central heating furnaces with a rated heat input capacity less than 175,000 Btu/hour used in residences and small commercial buildings and combination heating and cooling units with a cooling rate less than 65,000 Btu/hour. Rule 1147 limits NO_X from a variety of gas and liquid fired combustion equipment that require a District permit and are not specifically required to comply with a NO_X emission limit by other District Regulation XI rules. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (*see* sections 182(a)(2) and 182(f)), and must not relax existing requirements (*see* sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), but Rule 1147 and Rule 1111 are not subject to RACT because they are applicable to sources that are too small to exceed the major source threshold.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters", CARB, July 18, 1991.
5. "Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers", U.S. EPA 453/R–94–022, March 1994.
6. "Alternative Control Techniques Document—NO_X Emissions from Utility Boilers", U.S. EPA, 452/R–93–008, March 1994.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD for Rule 1147 describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 3, 2010, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 4, 2010. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of these rules and if that provision may be severed from the remainder of the rules, EPA may adopt as final those provisions of the rules that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 4, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 6, 2010.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(379)(i)(A)(*3*)and(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(379) * * *

(i) * * *

(A) * * *

(*3*) Rule 1111, "Reduction of NO_X Emissions from Natural Gas-Fired, Fan-Type Central Furnaces," amended on November 6, 2009.

(*4*) Rule 1147, "NO_X Reductions from Miscellaneous Sources," adopted on December 5, 2008.

* * * * *

[FR Doc. 2010–19057 Filed 8–3–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0797; FRL–8835–8]

Halosulfuron-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of halosulfuron-methyl in or on multiple commodities which are identified and discussed later in this document. Additionally, this regulation removes the existing tolerance on bean, snap, succulent at 0.05 parts per million (ppm) in that it is superseded by this action establishing a tolerance at 0.05 ppm on pea and bean, succulent shelled, subgroup 6B. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 4, 2010. Objections and requests for hearings must be received on or before October 4, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0797. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are

not limited to those engaged in the following activities:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0797 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 4, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0797, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of Wednesday, January 6, 2010 (75 FR 864) (FRL–8801–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7577) by IR-4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08549. The petition requested that 40 CFR 180.479 be amended by establishing tolerances for residues of the herbicide halosulfuron-methyl, methyl 3-chloro-5-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl]amino]sulfonyl]-1-methyl-1 H-pyrazole-4-carboxylate, and its metabolites and degradates (compliance with the tolerance level specified is to be determined by measuring only those halosulfuron-methyl residues convertible to 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as the stoichiometric equivalent of halosulfuron-methyl) in or on pea and bean, succulent shelled, subgroup 6B; pea and bean, dried shelled, except soybean, subgroup 6C; vegetables, tuberous and corm, subgroup 1C; bushberry, subgroup 13-07B; apple; rhubarb; and okra at 0.05 ppm That notice referenced a summary of the petition prepared by Gowan Company, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is not taking action at this time on the petitioned-for tolerance for pea and bean, dried shelled, except soybean, subgroup 6C due to insufficient field trial data to support this use. Additionally, the Agency is revoking the existing tolerance on bean, snap, succulent at 0.05 ppm in order to eliminate redundancy with the 0.05 ppm tolerance on pea and bean, succulent shelled, subgroup 6B established by this action. EPA is also revising the tolerance expressions for halosurfuron-methyl for new uses in this regulation and for existing plant and livestock commodities to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information". This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for halosulfuron-methyl including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with halosulfuron-methyl follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Halosulfuron-methyl has low acute toxicity by oral, dermal, and inhalation routes of exposure. It is not a dermal sensitizer nor is it an eye or skin irritant. The toxicity mode of action in mammals is undetermined. However, available data show that the dog is the most sensitive animal species. In the dog, decreased body weight was seen in the chronic oral toxicity study and decreased body weight gain was observed in females in the subchronic oral toxicity study. In the rat and mouse, there was a decrease in body weight gains at high dose levels in short-term and long-term oral and dermal studies. Both acute and subchronic neurotoxicity studies showed no neurotoxic effects. There was no quantitative evidence for increased susceptibility following pre- and/or post-natal exposure. However, there was qualitative evidence for increased susceptibility. In the rat developmental toxicity study, increases in resorptions, soft tissue (dilation of the lateral ventricles) and skeletal variations, and decreases in body weights were seen in the fetuses compared to clinical signs and decreases in body weights and food consumption in the maternal animals. In the rabbit study, increases in resorptions and post-implantation losses and a decrease in mean litter size were seen in the presence of decreases in body weight and food consumption in maternal animals. Thus, in both species, the developmental effect was considered to be qualitatively more severe than maternal effects.

Halosulfuron-methyl is classified as "not likely to be carcinogenic to humans" based on a lack of evidence for carcinogenicity in mice and rats following long-term dietary administration. Halosulfuron-methyl is negative for mutagenicity in a battery of genotoxicity studies. There is no evidence of immunotoxicity in the available studies for halosulfuron-methyl. Acute and subchronic neurotoxicity studies showed no evidence of neurotoxicity.

Specific information on the studies received and the nature of the adverse effects caused by halosulfuron-methyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: "Halosulfuron-Methyl: Human Health Risk Assessment for IR-4 Proposed Uses on Crop Group 6B Succulent Shelled Pea and Bean Subgroup, Crop Group 1C Tuberous and Corm Vegetables Subgroup, Crop Group 6C Dried Shelled Pea and Bean (Except Soybean), Subgroup 13-07B Bushberry, Okra, Apples, and Rhubarb, dated April 5, 2010," p. 13 in docket ID number EPA–HQ–OPP–2009–0797–0005.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for halosulfuron-methyl used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/FQPA Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–49 years of age)	NOAEL = 50 milligrams/kilograms/day (mg/kg/day) UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.5 mg/kg/day aPAD = 0.5 mg/kg/day	Developmental Toxicity - Rabbit LOAEL = 150 mg/kg/day based on decreased mean litter size, increased number of resorptions and increased post-implantations loss.
Acute dietary (General population including infants and children)	N/A	N/A	No adverse effect attributable to a single dose was identified and no dose/endpoint was selected.
Chronic dietary (All populations)	NOAEL= 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.1 mg/kg/day cPAD = 0.1 mg/kg/day	Chronic Toxicity - Dog LOAEL = 40 mg/kg/day based on decreased body weight gains in females.
Incidental oral short-term (1 to 30 days)	NOAEL= 50 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	Developmental Toxicity - Rabbit LOAEL = 150 mg/kg/day based on decreased body weight gain, food consumption, and food efficiency (maternal toxicity).
Incidental oral intermediate-term (1 to 6 months)	NOAEL= 10 mg/kg/day UF_A= 10x UF_H= 10x FQPA SF = 1x	Residential LOC for MOE = 100	13 week Subchronic toxicity - Dog LOAEL = 40 mg/kg/day based on on decreased body weight gains and food efficiency along with hematological and clinical chemistry changes.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/FQPA Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Dermal short-term (1 to 30 days)	Dermal study NOAEL = 100mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100	21-Day Dermal Toxicity Study - Rat LOAEL = 1,000 mg/kg/day based on decreased body weight gain in males.
Dermal intermediate-term (1 to 6 months)	Dermal study NOAEL= 10 mg/kg/day (dermal absorption rate = 75%) UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100	13 Week Subchronic Toxicity - Dog LOAEL = 40 mg/kg/day based on decreased body weight gains and food efficiency along with hematological and clinical chemistry changes.
Inhalation short-term (1 to 30 days)	Inhalation study NOAEL = 50 mg/kg/day (inhalation absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100	Developmental Toxicity - Rabbit LOAEL = 150 mg/kg/day based on decreased body weight gain, food consumption, and food efficiency (maternal toxicity).
Inhalation Intermediate-term (1 to 6 months)	Inhalation (or oral) study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100	13 week Subchronic Toxicity - Dog LOAEL = 40 mg/kg/day based on based on decreased body weight gains and food efficiency along with hematological and clinical chemistry changes.
Cancer (Oral, dermal, inhalation)	Classification: ≥not likely to be carcinogenic to humans≥ by the oral route, based on no evidence of carcinogenicity from studies in rats and mice.		

A 75% dermal absorption factor should be used in route-to-route extrapolation for the intermediate term dermal exposure risk. Absorption via the inhalation route is presumed to be equivalent to oral absorption.NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UFA = extrapolation from animal to human (inter-species). UFH = potential variation in sensitivity among members of the human population (intra-species). FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to halosulfuron-methyl, EPA considered exposure under the petitioned-for tolerances as well as all existing halosulfuron-methyl tolerances in 40 CFR 180.479. EPA assessed dietary exposures from halosulfuron-methyl in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

Such effects were identified for halosulfuron-methyl including decreased mean litter size, increased number of resorptions (total and per dam) and increased post-implantation loss (developmental toxicity) were identified for the population subgroup females 13 to 49 years old (the only population subgroup with a toxicological endpoint attributable to a single dose of halosulfuron-methyl). In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT) for all existing and recommended new uses of halosulfuron-methyl.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues and 100 PCT for all existing and recommended new uses of halosulfuron-methyl

iii. *Cancer*. Based on the data summarized in Unit III.A., EPA has concluded that halosulfuron-methyl does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information* EPA did not use anticipated residue and/or PCT information in the dietary assessment for halosulfuron-methyl. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for halosulfuron-methyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of halosulfuron-methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations

(EDWCs) of halosulfuron-methyl are Tier I EDWCs based on a maximum annual application rate of 0.125 lb active ingredient (ai)/acre(A) for rice.

Acute exposures and chronic exposures for non-cancer assessments are estimated to be 59.2 parts per billion (ppb) based on FIRST model for surface water and 0.065 ppb bases on SCI-GROW model results for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute and chronic dietary risk assessment, the water concentration value of 59.2 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Halosulfuron-methyl is currently registered for the following uses that could result in residential exposures: Ornamentals, and commercial and residential turfgrass. EPA assessed residential exposure using the following assumptions: Residential handlers may receive short-term dermal and inhalation exposures to halosulfuron-methyl when mixing, loading and applying halosulfuron-methyl products. Adults and children may be exposed to halosulfuron-methyl residues through dermal contact with turf during postapplication activities. In addition, toddlers may receive short- and intermediate-term oral exposure from incidental ingestion during postapplication activities.

Halosulfuron-methyl exposure data for handler activities were not submitted to EPA in support of registered lawn uses. EPA's Draft Standard Operating Procedures (SOPs) for Residential Exposure Assessments, and Recommended Revisions were used as the basis for the residential handler exposure calculations. The handler exposure data used in this assessment are from the Outdoor Residential Exposure Task Force (ORETF).

For residential exposure from lawn use, the Agency evaluated the combined exposure and risk estimates to adults from halsulfuron-methyl under scenarios including:

i. Mix/load and broadcast application of liquid formulation (garden hose-end sprayer) for both dermal and inhalation routes, and

ii. Post-application exposure by dermal route.

For residential postapplication exposure, the following scenarios resulting from lawn treatment were assessed:

a. Adult and children 3 to <6 years old post-application dermal exposure,

b. Child 3 to <6 years old incidental ingestion of pesticide residues on lawns from hand-to-mouth transfer,

c. Toddlers' object-to-mouth transfer from mouthing of pesticide-treated turf grass, and

d. Children 3 to <6 years old incidental ingestion of soil from pesticide-treated residential areas. Post-application exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found halosulfuron-methyl to share a common mechanism of toxicity with any other substances, and halosulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that halosulfuron-methyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for halosulfuron-methyl includes rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. As discussed in Unit III.A., there was no quantitative evidence for increased susceptibility following pre-natal and/or post-natal exposure. However, there was qualitative evidence for increased susceptibility of fetuses in the rat and rabbit developmental studies. In the rat study, increases in resorptions, soft tissue (dilation of the lateral ventricles) and skeletal variations, and decreases in body weights were seen in the fetuses compared to clinical signs and decreases in body weights and food consumption in the maternal animals. In the rabbit study, increases in resorptions and post-implantation losses and decrease in mean litter size was seen in the presence of decreases in body weight and food consumption in maternal animals. Thus, in both species, the developmental effect was considered to be qualitatively more severe than maternal effects (i.e., qualitative evidence for susceptibility). In both studies, there are clear NOAELs/LOAELs for developmental and maternal toxicities, developmental effects were seen in the presence of maternal toxicity, and the effects were only seen at the high dose. Additionally, in rats, developmental effects were seen at a dose which is approaching the limit-dose. The degree of concern is low and there are no residual uncertainties for prenatal toxicity in both rats and rabbits.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for halosulfuron-methyl is complete except for an immunotoxicity study as required by the latest amendment to 40 CFR part 158. After analysis of the database, an additional factor (UF_{DB}) for database uncertainty is not needed to account for the lack of this study because the available data do not suggest that this chemical affects the immune system.

ii. There is no indication that halosulfuron-methyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in

rats and rabbits, as discussed in this unit, there are no residual uncertainties after establishing toxicity endpoints and the degree of concern for pre-and/or post-natal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues, and conservative (protective) assumptions in the ground water and surface water modeling were used to assess exposure to halosulfuron-methyl in drinking water. Similarly conservative assumptions were also used to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by halosulfuron-methyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to halosulfuron-methyl will occupy less than 1% of the aPAD for the population subgroup of concern, females 13-49 years old, the only population group where there are acute toxicology concerns.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to halosulfuron-methyl from food and water will utilize 5% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of halosulfuron-methyl is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Halosulfuron-methyl is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to halosulfuron-methyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in short-term aggregate MOEs ranging from 2,800 to 4,800. The MOE for the U.S. population is 4,700. The most highly exposed subgroup is all infants (< 1 year old), with a MOE of 2,800. Because these estimates of short-term aggregate risk for halosulfuron-methyl are above a MOE of 100, these MOEs are not of concern to EPA.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Halosulfuron-methyl is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to halosulfuron-methyl.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs ranging from 500 to 680. The MOE for the U.S. population is 500. The most highly exposed children's subgroup was all infants (< 1 year old), with a MOE of 680. These estimates of aggregate risk do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, halosulfuron-methyl is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to halosulfuron-methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical method is available for the enforcement of tolerances for residues of halosulfuron-methyl in plants. Monsanto Analytical Method RES-109-97-4 (gas chromatography, using thermionic-specific detection, TSD, nitrogen specific) has been validated by EPA. The method's limit of quantitation (LOQ) determined across a variety of tested crops is 0.05 ppm. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex, Canadian or Mexican maximum residue limits (MRLs) established for residues of halosulfuron-methyl in crop or livestock commodities.

C. Revisions to Petitioned-For Tolerances

EPA is not taking action on the petitioned-for tolerance for pea and bean, dried shelled (except soybean) due to inadequate data available to support these uses. Generally, EPA recommends that five field trials be submitted for peas but none have been submitted with this petition.

EPA is revising the tolerance expressions for halosurfuron-methyl for new uses in this regulation and for existing plant and livestock commodities to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured.

The revised tolerance expression for livestock commodities makes clear that the tolerances cover residues of halosulfuron-methyl and its metabolites and degradates and that compliance with the tolerance levels will be determined by measuring only those halosulfuron-methyl residues containing the 3-chlorosulfonamide (3CSA) moiety, expressed as the stoichiometric equivalent of halosulfuron-methyl.

EPA believes that it is reasonable to make these changes in the tolerance expressions final without prior proposal and opportunity for comment, because public comment is not necessary, in that the changes have no substantive effect on the tolerance, but rather are merely intended to clarify the tolerance expression compliance component(s) measurement.

V. Conclusion

Therefore, tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidiny)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, including its metabolites and degradates, in or on pea and bean, succulent shelled, subgroup 6B; vegetable, tuberous and corm, subgroup 1C; bushberry, subgroup 13-07B; apple; rhubarb; and okra at 0.05 ppm. Compliance with the tolerance level specified below is to be determined by measuring only halosulfuron-methyl.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 26, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.479 is amended as follows:

■ i. Revise the introductory text in paragraphs (a)(1) and (a)(2);

■ ii. In paragraph (a)(2), in the table, revise the commodity Bean, snap, succulent to read Pea and bean, succulent shelled, subgroup 6; and

■ iii. Alphabetically add the following commodities to the table in paragraph (a)(2) to read as follows:

§ 180.479 Halosulfuron-methyl; tolerances for residues.

(a) * * * (1) Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidiny)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only those halosulfuron-methyl residues containing the 3-chlorosulfonamide (3-CSA) moiety, expressed as the stoichiometric equivalent of halosulfuron-methyl, in or on the commodity.

* * * * *

(2) Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidiny)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only halosulfuron-methyl.

Commodity	Parts per million
* * *	* *
Apple	0.05
* * *	* *
Bushberry, subgroup 13-07B	0.05
* * *	* *
Okra	0.05

Commodity	Parts per million
* * *	* *
Pea and bean, succulent shelled, subgroup 6B ..	0.05
* * *	* *
Rhubarb	0.05
* * *	* *
Vegetable, tuberous and corm, subgroup 1C	0.05

* * * * *

[FR Doc. 2010–19053 Filed 8–3–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WP Docket No. 10–72, WP Docket No. 10–54; FCC 10–124]

Amendment of the Commission's Rules Regarding Amateur Radio Service Communications During Government Disaster Drills

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules to permit amateur radio operators to transmit messages, under certain limited circumstances, during either government-sponsored or non-government sponsored emergency and disaster preparedness drills, regardless of whether the operators are employees of entities participating in the drill.

DATES: Effective September 3, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Beers, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–1170, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (*R&O*) in WP Docket No. 10–72; WP Docket No. 10–54; FCC 10–124, adopted July 14, 2010, and released July 14, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. This document may also be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov.*

Summary of the Report and Order

1. Current rules provide for amateur radio use during emergencies. At the same time, the rules prohibit communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. While there are some exceptions to this prohibition, there is none that would permit amateur station control operators who are employees of public safety agencies and other entities, such as hospitals, to participate in drills, tests and exercises in preparation for such emergency situations and transmit messages on behalf of their employers during such drills and tests. Accordingly, the Commission amends its rules to provide that, under certain limited conditions, amateur radio operators may transmit messages during emergency and disaster preparedness drills and exercises, limited to the duration of such drills and exercises, regardless of whether the operators are employees of entities participating in the drills or exercises.

2. One of the fundamental principles underlying the amateur radio service is the "[r]ecognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications." Further, the rules state that "[n]o provision of these rules prevents the use by an amateur station of any means of radio communication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available." Indeed, amateur radio operators provide essential communications links and facilitate relief actions in disaster situations. While land mobile radio services are the primary means of conducting emergency communications, amateur radio plays a unique and critical role when these primary facilities are damaged, overloaded, or destroyed. For example, during Hurricane Katrina, amateur radio operators volunteered to support many agencies, such as the Federal Emergency Management Agency, the National Weather Service, and the American Red Cross. Amateur radio stations provided urgently needed wireless communications in many locations where there were no other means of communicating and also provided other technical aid to the communities affected by Hurricane Katrina.

3. Since amateur radio is often an essential element of emergency preparedness and response, many state and local governments, public safety agencies, and hospitals incorporate amateur radio operators and the communication capabilities of the amateur service into their emergency planning. In this regard, some entities, such as hospitals, emergency operations centers, and police, fire, and emergency medical service stations, have emphasized the participation of their employees who are amateur station operators in emergency and disaster drills and tests. For example, a representative of the New Orleans Urban Area Security Initiative recently emphasized the importance of conducting emergency drills and the need for amateur participation.

4. The Commission's rules expressly permit operation of amateur stations for public service communications during emergencies, and on a voluntary basis during drills and exercises in preparation for such emergencies. Given, however, that the Amateur Radio Service is primarily designated for "amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest," the rules expressly prohibit amateur stations from transmitting communications "in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer." Accordingly, public safety and public health entities seeking to have employees operate amateur stations during government-sponsored emergency preparedness and disaster drills presently must request a waiver. In this connection, Commission staff has granted several waivers on a case-by case basis.

5. On February 17, 2010, the American Hospital Association (AHA) filed a request for a blanket waiver of Section 97.113(a)(3) of the Commission's rules to permit hospitals seeking accreditation to use amateur radio operators who are hospital employees to transmit communications on behalf of the hospital as part of emergency preparedness drills. On March 3, 2010, the Wireless Telecommunications and Public Safety

and Homeland Security Bureaus jointly issued a Public Notice seeking comment on the foregoing request.

6. On March 18, 2010, the Commission adopted a *Notice of Proposed Rulemaking* (*NPRM*) seeking comment on whether to amend the rules to permit amateur radio operators to participate in government-sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test. The Commission also invited comment on whether there were circumstances in which amateur operators should be allowed to participate on their employer's behalf in non-government-sponsored tests or drills. Comments were due May 24, 2010, and reply comments were due June 7, 2010.

Government-sponsored Emergency Drills

7. In the *NPRM,* the Commission tentatively concluded to permit amateur radio operators to participate in government-sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test. In reaching this tentative conclusion, the Commission stated that employee status should not preclude or prevent participation in government-sponsored emergency and disaster tests and drills. The Commission also tentatively concluded that extending authority to operate amateur stations during such drills will enhance emergency preparedness and thus serve the public interest.

8. In response to the *NPRM,* public safety agencies and other emergency first responder entities voiced general support for the proposal. These commenters note that public safety agencies frequently incorporate amateur radio and indeed are encouraged to do so as a part of Commission policy. Several amateur groups and clubs also support the rule amendment, because it will improve the skills of employees who may be called upon to use their expertise in times of emergency or disaster. Other commenters suggest that the rule amendment would likely increase the usefulness of existing national-level programs such as the Radio Amateur Civil Emergency Service (RACES), the Amateur Radio Relay League's Amateur Radio Emergency Service (ARES©), or the US Department of Defense's Military Auxiliary Radio System (MARS).

9. On the other hand, several commenters state that the proposal would erode the amateur status of the service, which is an essential characteristic of amateur radio. Nickolaus E. Legget argues that this "would lead to a 'backdoor' de facto reallocation of some frequencies to hospitals and related operations." Other commenters maintain that this proposal would exacerbate the tendency of some hospitals or other public safety agencies to replace commercially available CMRS equipment with less expensive amateur radio equipment, intending to rely on amateur radio and employee licensees for communications. One commenter, James T. Philopen, states that the Commission lacks authority to amend the existing rule under Article 1, Section II Radio Service, subpart 56 of the International Telecommunications Treaty, which defines the Amateur Radio service as one "without pecuniary interest." Another commenter objects to the proposed amendment, stating that such a rule would lead to employees being coerced into using their amateur privileges, including using their amateur privileges in ways prohibited by our rules. Finally, a handful of commenters suggest alternative language or request additional definitions to the proposed rule, or recommend alternative regulatory treatment.

10. As the Commission noted in the *NPRM,* experience has shown that amateur operations can and have played an essential role in protecting the safety of life and property during emergency situations and disaster situations. Moreover, the current amateur radio service rules, which permit participation in such drills and tests by volunteers (*i.e.,* non-employees of participating entities), reflect the critical role amateur radio serves in such situations. However, as evidenced by recent waiver requests, state and local government public safety agencies, hospitals, and other entities concerned with the health and safety of citizens appear to be limited in their ability to conduct disaster and emergency preparedness drills, because of the employee status of amateur radio licensees involved in the training exercises. The Commission therefore amends its rules to permit amateur radio operators to participate in government-sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test. The Commission finds that extending authority to operate amateur stations during such drills will enhance emergency preparedness and response and thus serve the public interest.

11. In reaching this decision, the Commission did not find persuasive those comments stating that this decision will erode the amateur radio service. The exception the Commission provides is limited to the duration and scope of the drill, test or exercise being conducted, and operational testing immediately prior to the drill, test or exercise. Further, when such operations are conducted in these limited circumstances, the amateur communications are only one component of the overall and more extensive communications activities that are involved with emergency drills and tests. Thus, the Commission does not foresee the use authorized herein to be extensive enough to amount to an erosion of the amateur radio service. Moreover, under existing rules, licensed employees may use amateur radio privileges when an emergency has rendered other communications unavailable. The Commission's decision reflects the practical reality that a large number of agencies and organizations at the state and local levels coordinate with their local volunteer amateur radio operators to conduct emergency drills and exercises in concert with other modes of communication, such as land mobile radio. This integrative activity is essential to allow for a practiced response on the part of the first responder community in the event of an emergency. Because some of those drills and exercises include transmission of amateur communications by employees of participating entities, this rule amendment will support the Commission's ongoing emergency preparedness and response priorities and is therefore consistent with the public interest.

12. The Commission also rejects the comments claiming that we lack the authority to amend our amateur rules because it conflicts with the Communications Act and the prohibition on "pecuniary interest" in the ITU treaty. The Commission's authority under the Communications Act to propose, promulgate and amend rules for the purpose of promoting safety of life and property through the use of wire and radio communication is well-established. Moreover, the limited action the Commission is taking here does not violate the ITU treaty. The ITU Radio Regulations specifically state that "[a]dministrations are encouraged to take the necessary steps to allow amateur stations to prepare for and meet communication needs in support of disaster relief." The rule amendments the Commission adopts do not undermine the "pecuniary interest" limitation. Rather, the amended rules provide a discrete exception to the existing rule that prohibits any

pecuniary interest attributable to the operator including communications on behalf of an employer. The Commission also finds unpersuasive comments that suggest that the amended rules either will cause employees to be coerced to transmit amateur radio messages or would cause entities to use amateur radio privileges in any way that would violate the Commission's rules. The flexibility of amateur operators will remain limited by the requirements of the Communications Act and the Commission's rules, including the rule amendments we adopt herein. The Commission's action today does not alter the responsibilities of these operators, and, as was the case under the prior rules, amateur licensees are obliged to operate their radio stations in compliance with the terms of their licenses, notwithstanding any conflicting instruction from their employers. In any event, the Commission does not expect that employer overreaching is likely to be a problem, given that the amended rules reflect a spirit of cooperation recognized by both the public safety community and the amateur radio community as necessary for preparing for times of emergency or disaster.

13. The Commission also finds it unnecessary to adopt alternative language or specify additional definitions. The Commission finds its proposed language is sufficiently clear. The purpose of the rule amendment is to promote the effectiveness and usefulness of emergency operations by permitting licensed employees to practice the skills they would use in an actual emergency as a last resort, *i.e.,* should other means of communications fail or be unavailable. The Commission finds that the amended language is narrowly tailored to achieve these ends.

14. In amending the amateur radio rules, the Commission reiterates that it does not intend to disturb the core principle of the amateur radio service as a voluntary, non-commercial communication service carried out by duly authorized persons interested in radio technique with a personal aim and without pecuniary interest. Rather, the Commission believes that the public interest will be served by establishing a narrow exception to the prohibition on transmitting amateur communications in which the station control operator has a pecuniary interest or employment relationship, and that such an exception is consistent with the intent of the amateur radio service rules. Accordingly, the Commission limits the amateur operations in connection with emergency drills to the duration and scope of the drill, test or exercise being conducted, and to operational testing immediately prior to the drill, test or exercise.

15. Some commenters request more specific limits on the duration of the use of amateur radio services to prevent continuous drills and the bandwidth from becoming *de facto* emergency service spectrum. The Commission declines to adopt specific time restrictions other than a limit tied to the duration of the exercise. The Commission finds that such matters should be left to the discretion of the sponsoring agencies. The Commission emphasizes, however, that the amendment does not permit communications unrelated to the drill or exercise being conducted. Other commenters suggest that the rules should specifically provide for more expansive operational testing. Boeing suggests that testing be permitted thirty days prior to a scheduled government sponsored drill. The Commissino declines to specify the timing or duration of emergency drills. As evidenced by the waiver requests that have been submitted, the Commission expects that agencies will schedule emergency drills or exercises at appropriate times and for appropriate durations.

Non-Government-sponsored Emergency Drills

16. In the *NPRM,* the Commission proposed that the emergency tests and drills must be sponsored by Federal, state, or local governments or agencies, in order to limit the narrow exception to ensure that drills further public safety. The Commission noted, however, that there may be circumstances where conducting emergency drills for disaster planning purposes, even if not government-sponsored, would serve the public interest. Accordingly, we sought comment on whether we should permit employee operation of amateur stations during non-government-sponsored emergency drills, if the purpose of the drill is to assess communications capabilities, including amateur radio, in order to improve emergency preparedness and response.

17. Most of the commenters who support permitting employee operation of amateur stations during government sponsored drills also support such operation during non-government-sponsored emergency drills, if the purpose of the drill is to assess communications capabilities to further public safety. However, a few commenters opposed expansion of the rule to include non-government sponsored emergency drills For example, Holtz states that this would "open the door for significant commercial abuse and exploitation of the amateur service;" that in the "absence of government sponsorship, there is ambiguity about whether any particular drill by a commercial entity is primarily for its own benefit, or for the public benefit;" and that this would create "an incentive for employers to pressure employees to get amateur licenses, and to pressure licensed amateurs to engage in questionable or prohibited practices," i.e., to use "amateur radio as a lower-cost substitute for Part 90 systems." In relation to such concerns, Sheppard suggests limiting this expansion to those operations "when the emergency drill or test is sponsored by an agency or organization which supports public safety or public health." And Traynor suggests limiting such expansion to "organizations defined by FEMA as providing the nation with Critical Infrastructure and Key Resources (CIKR) as described in the National Infrastructure Protection Plan (NIPP)." Earlier, in response to the AHA Petition, ARRL asked that AHA's requested waiver be limited to radio transmissions made by hospital employees that are "necessary to participation in emergency preparedness and disaster drills that include Amateur operations for the purpose of emergency response, disaster relief or the testing and maintenance of equipment used for that purpose."

18. In addition to Federal, state and local authorities, other non-government entities, such as private hospitals, have a direct interest in the health and welfare of citizens, especially during times of emergency or disaster. During those times, emergency communications serve a critical purpose to both governmental and non-governmental entities as well as to the constituencies they serve. As we determined above, familiarization, planning, and training are required for effective use of amateur radio in an emergency. The Commission therefore finds that the public interest would be served by permitting amateur radio operators to participate in non-government sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test.

19. While the Commission recognizes commenters' concerns regarding the potential for improper use of amateur radio in conducting emergency drills and tests, the Commission finds that the public interest in permitting non-government-sponsored entities to utilize, on a limited basis, amateur radio as part of emergency preparedness and response drills outweighs such

concerns. As with government-sponsored emergency drills, the Commission limits the amateur operations in connection with non-government sponsored emergency drills to the duration and scope of the drill, test or exercise being conducted, and operational testing immediately prior to the drill, test or exercise. Moreover, in light of the concerns raised by some commenters, the Commission requires that non-government sponsored drills and tests be limited to no more than one hour per week; except that no more than twice in any calendar year, they may be conducted for a period not to exceed 72 hours. This time limitation, which is consistent with the timeframes contained in the waiver requests filed with the Commission, should serve to further ensure the use of amateur radio for bona fide emergency testing. The Commission emphasizes that the purpose for any drills it authorizes herein must be related to emergency and disaster preparedness. By limiting the purpose in this manner, the Commission further ensures that such drills will be appropriately limited.

ARPC Petition and AHA Petition

20. ARPC requested we amend § 97.113(a)(3) in order to permit amateur radio licensees employed by public safety agencies to participate in drills conducted by their employer. Similarly in its request, AHA emphasized the need to allow hospital employees with amateur radio licenses to participate in emergency preparedness and disaster readiness tests and drills. The Commission appreciates both of these filings, and, as discussed herein, supports the requested rule changes. Because the Commission amends the rules in a manner that addresses the concerns raised by both petitioners, it dismisses both petitions as moot.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

21. The *R&O* does not contain proposed information collection(s), subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, the *R&O* does not contain any proposed 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).

B. Congressional Review Act

22. The Commission will send a copy of the *R&O* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), *see* 5 U.S.C. 801(a)(1)(A).

II. Final Regulatory Flexibility Certification

23. The Regulatory Flexibility Act (RFA) requires an initial regulatory flexibility analysis to be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

24. 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. Moreover, the rule being adopted is so narrow that no nexus exists between the regulated amateur licensees who may be employed, and costs to be born by employers (*e.g.* overtime pay). Therefore, if there were any costs imposed on employers, that is a matter outside the scope of the rule and thus the impact of the rule cannot be said to involve the imposition of any economic burden on those individual persons who are the only entities regulated and impacted by the rule adopted in the *R&O.* Finally, no commenters addressed our conclusion in the *NPRM* and small entities which filed comments uniformly supported the proposed rule changes. Therefore, the Commission certifies that the proposals in the *R&O* will not have a significant economic impact on a substantial number of small entities.

25. *Report to Congress:* The Commission will send a copy of the *R&O,* including this Final Regulatory Flexibility Certification, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, The Commission will send a copy of the *R&O,* including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This final certification will also be published in the Federal Register. A copy of the *R&O* and Final Regulatory Flexibility Certification (or summaries thereof) will also be published in the **Federal Register.**

III. Ordering Clauses

26. Accordingly, *it is ordered,* pursuant to §§ 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g),706 and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, that the Report and Order in WP Docket No. 10–72 and WP Docket No. 10–54 is adopted, and that part 97 of the Commission's rules, 47 CFR part 97, is amended. The R&O shall become effective September 3, 2010.

27. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Amateur radio service.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 97 as follows:

PART 97—AMATEUR RADIO SERVICE

■ 1. 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.

■ 2. Section 97.113 is amended by revising paragraph (a)(3), redesignating paragraphs (c) and (d) as new paragraphs (a)(3)(iii) and (a)(3)(iv) respectively, and redesignating paragraphs (e) and (f) as (c) and (d) respectively, to read as follows:

§ 97.113 Prohibited transmissions.

(a) * * *

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer, with the following exceptions:

(i) A station licensee or control station operator may participate on behalf of an employer in an emergency preparedness or disaster readiness test or drill, limited to the duration and scope of such test or drill, and operational testing immediately prior to such test or drill. Tests or drills that are not government-sponsored are limited to a total time of one hour per week; except that no more than twice in any calendar year, they may be conducted for a period not to exceed 72 hours.

(ii) An amateur operator may notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis.

* * * * *

[FR Doc. 2010–19198 Filed 8–3–10; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 75, No. 149
Wednesday, August 4, 2010

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 357

[Docket No. APHIS-2009-0018]

RIN 0579-AD11

Lacey Act Implementation Plan; Definitions for Exempt and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In response to recent amendments to the Lacey Act, we are proposing to establish definitions for the terms "common cultivar" and "common food crop." The amendments to the Act expanded its protections to a broader range of plant species, extended its reach to encompass products, including timber, that derive from illegally harvested plants, and require that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exemptions to the provisions of the Act. The Act does not define the terms "common cultivar" and "common food crop" but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. Our proposed definitions would specify which plants and plant products will be subject to the provisions of the Act, including the declaration requirement.

DATES: We will consider all comments that we receive on or before October 4, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0018*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0018.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Staff Officer, Quarantine Policy Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1231; (301) 734-8295.

SUPPLEMENTARY INFORMATION:

Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in "illegal" wildlife, fish, and plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protections to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). As amended, the Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of any Federal, State, tribal, or foreign law that protects plants. The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import certain plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. Currently, enforcement of the declaration requirement is being phased in, as described in two notices we published in the **Federal Register** (74 FR 5911-5913 and 74 FR 45415-45418, Docket No. APHIS-2008-0119).

Under the Act, "Plant" means: "Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands." There are three categories of plants that are exempt from the provisions of the Act:

1. Common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);
2. Scientific specimens of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that are to be used only for laboratory or field research;
3. Plants that are to remain planted or to be planted or replanted. The amendments to the Lacey Act, including the declaration requirements, still apply for items described under 2 and 3 if the plant is listed:

- In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 27 UST 1087; TIAS 8249);
- As an endangered or threatened species under the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 *et seq.*); or
- Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Purpose and Scope

The U.S. Department of Agriculture (USDA) and the U.S. Department of the Interior (DOI) have been given authority under the Lacey Act to define the terms "common cultivar" and "common food crop." In accordance with this authority, USDA's Animal and Plant Health Inspection Service (APHIS) and DOI's U.S. Fish and Wildlife Service (FWS) have developed definitions for those terms. We propose to establish a new part in the plant-related provisions of title 7, chapter III of the Code of Federal Regulations (CFR), which will contain these definitions.

The definitions, which are discussed below, are designed to ensure that the exemptions do not place at risk plants of conservation concern. Species of plants listed as endangered or threatened under the Endangered Species Act, listed in the CITES Appendices, or protected under State law are excluded from exemption because they are, for purposes of the Lacey Act, not common. However, the fact that a plant is not listed as endangered or threatened does not mean that it is necessarily a common one. In order to ensure that the exemption from the provisions of the Act applies only to plants that are common food crops or cultivars, the definitions are limited to plants of species grown on a commercial scale.

As we propose to define them, these terms would apply to the entire species or hybrid of plant; the determination of whether a plant falls within these definitions is not made at the shipment or facility level. For example, bananas are a common food crop because bananas in general meet the definition of a common food crop. It is not necessary to determine whether specimens of bananas in a particular shipment or from a particular facility meet the definition. The definition for "common cultivar" is consistent with the definition of "cultivar" contained in 50 CFR 23.5 (the CITES regulations promulgated by FWS). The definition for "common food crop" was developed with consideration of, and is consistent with, common dictionary definitions and terms in commercial use.

Definitions

We propose to define the terms "common cultivar" and "common food crop" as follows:

Common cultivar. A plant (except a tree) that:

(a) Has been developed through selective breeding or other means for specific morphological or physiological characteristics; and

(b) Is a species or hybrid that is cultivated on a commercial scale; and

(c) Is not listed:

(1) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(2) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(3) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Common food crop. A plant that:

(a) Has been raised, grown, or cultivated for human or animal consumption, and

(b) Is a species or hybrid that is cultivated on a commercial scale; and

(c) Is not listed:

(1) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(2) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(3) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

In addition, we propose to add a definition for "plant" consistent with the definition in the Act, to read as follows: "Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands."

As we explained above, these definitions are designed to ensure that the exemptions do not place at risk plants of conservation concern, while exempting plants grown on a commercial scale. They are also designed to be consistent with existing and commonly understood definitions of the terms, as well as to be consistent with the provisions of the Lacey Act.

To supplement these definitions, we will provide guidance in the form of a list of examples of plant taxa or commodities that qualify for exemption from the provisions of the Act as common cultivars and common food crops. USDA and DOI will develop and maintain this list on a Web site and update it when necessary. We will inform our stakeholders when the list is updated via email and other electronic media. We will also note updates of the list on APHIS's Web site. This list will not be exhaustive, but we will provide an email address to which the public can send inquiries about specific taxa or commodities and request to add taxa or commodities to the list.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Recent amendments to the Lacey Act expanded its protections to a broader range of plant species, extended its reach to encompass products, including timber, that derive from illegally harvested plants, and require that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exemptions to the provisions of the Act. The Act does not define the terms "common cultivar" or "common food crop," but instead gives authority to the USDA and the DOI to define these terms by regulation. This proposed rule provides these definitions.

To the extent that the proposed rule defines which products are exempted from the provisions of the Act, it would benefit U.S. importers, large and small. By defining the terms "common cultivar" and "common food crop," the proposed rule would facilitate importer understanding of and compliance with the Act's requirements.

"Common cultivar" and "common food crop" are defined in this proposed rule to ensure that the exemptions do not place at risk plants of conservation concern. The definitions are also consistent with the terms' existing and commonly understood definitions. Since the terms have not previously been defined, there should be no instances in which an importer would be required because of this rule to make declarations for commodities that are not now being declared. In other words, the definitions presented in this rule and the related exemptions should not result in additional costs for importers based on their current activities. On the other hand, APHIS has estimated that about 5 percent of declarations being made under the current stage of phased in enforcement of the Act are either for common cultivars or common food crops that would be exempted under the proposed definitions. The costs incurred in making these declarations are a measure of the expected benefits of the rule. We estimate the total annual cost savings associated with these declarations alone would be between $900,000 and $2.8 million. Note that the full implementation of the declaration requirement would cover far more product categories than currently require a declaration.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and

regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 357

Endangered and threatened species, Plants (Agriculture).

Accordingly, we are proposing to amend Title 7, subtitle B, chapter III, of the Code of Federal Regulations as follows:

1. A new part 357 is added to read as follows:

PART 357—CONTROL OF ILLEGALLY TAKEN PLANTS

Sec.
357.1 Purpose and scope.
357.2 Definitions.

Authority: 16 U.S.C. 3371 *et seq.*; 7 CFR 2.22, 2.80, and 371.2(d).

§ 357.1 Purpose and scope.

The Lacey Act, as amended (16 U.S.C. 3371 *et seq.*), makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of any Federal, State, tribal, or foreign law that protects plants. The Lacey Act also makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act. In addition, the Act requires that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exemptions to the provisions of the Act. The Act does not define the terms "common cultivar" and "common food crop" but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. The regulations in this part provide the required definitions.

§ 357.2 Definitions.

Common cultivar. A plant (except a tree) that:

(a) Has been developed through selective breeding or other means for specific morphological or physiological characteristics; and

(b) Is a species or hybrid that is cultivated on a commercial scale; and

(c) Is not listed:

(1) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(2) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(3) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Common food crop. A plant that:

(a) Has been raised, grown, or cultivated for human or animal consumption; and

(b) Is a species or hybrid that is cultivated on a commercial scale; and

(c) Is not listed:

(1) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(2) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(3) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Plant. Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands.

Done in Washington, DC, this 26th day of July 2010.

Ann Wright,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2010–19098 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated 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:

* * * * *

The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 02 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 30, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed 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, e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, 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.

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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on January 29, 2010 (75 FR 4710). That earlier NPRM proposed to supersede AD 2007–05–08, Amendment 39–14969 (72 FR 96580, March 5, 2007), to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, Airbus has released new service information. In addition, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0048, dated March 19, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The airworthiness limitations are currently distributed in the Airbus A330 Airworthiness Limitations Section (ALS).
>
> The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).
>
> The revision 02 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.
>
> This new AD retains the requirements of EASA AD 2008–0138, which is superseded [EASA AD 2008–0138 superseded EASA AD 2006–0224, which corresponds to FAA AD 2007–05–08; FAA AD 2007–05–08 also contains similar actions for Model A340 airplanes], and requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in Airbus A330 ALS Part 3 revision 02.

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. You may obtain further information by examining the MCAI in the AD docket.

Comments

We have considered the following comments received on the earlier NPRM.

Request To Update Service Information

Air Transport Association (ATA), on behalf of its member Delta, requests that we update the NPRM to reference Airbus A330 ALS Part 3—Certification Maintenance Requirements, Revision 02, including Appendices 1 and 2, dated December 16, 2009.

We agree to reference Airbus A330 ALS Part 3—Certification Maintenance Requirements, Revision 02, including Appendices 1 and 2, dated December 16, 2009, as an appropriate source of service information. Airbus Airworthiness Limitations Section (ALS) Part 3, Revision 02, dated December 16, 2009, contains more restrictive maintenance requirements and airworthiness limitations. We have issued this supplemental NPRM to provide the public with opportunity to comment.

Change to Proposed Applicability

We have revised the applicability statement of this supplemental NPRM to remove the Airbus Model A340–200, –300, –500, and –600 series airplanes. We have issued AD 2010–01–07, Amendment 39–16165 (75 FR 1538, January 12, 2010), and that AD applies to Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes. That AD addresses the identified unsafe condition for those airplanes.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **Note** within the proposed AD.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 58 products of U.S. registry.

The actions that are required by AD 2007–05–08 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this

proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,930, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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 39–14969 (72 FR 9658, March 5, 2007) and adding the following new AD:

Airbus: Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD.

Comments Due Date

(a) We must receive comments by August 30, 2010.

Affected ADs

(b) This AD supersedes AD 2007–05–08, Amendment 39–14969.

Applicability

(c) This AD applies to all Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 05.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * * *

The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 02 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1A.

Restatement of Requirements of AD 2007–05–08, With Requirements for Model A340 Airplanes Removed

Revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness

(f) Unless already done: Within 90 days after April 9, 2007 (the effective date of AD 2007–05–08), revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006. Accomplish the actions specified in the applicable CMR at the times specified in the applicable CMR and in accordance with the applicable CMR, except as provided by paragraphs (f)(1) and (f)(2) of this AD.

(1) The associated interval for any new task is to be counted from April 9, 2007.

(2) The associated interval for any revised task is to be counted from the previous performance of the task.

New Requirements of This AD

Actions and Compliance

(g) Unless already done, within 90 days of the effective date of this AD: Revise the ALS of the Instructions for Continued Airworthiness by incorporating Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 02, dated December 16, 2009. At the times specified in the Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 02, dated December 16, 2009, comply with all applicable maintenance requirements and associated airworthiness limitations included in Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 02, dated December 16, 2009. Doing this revision terminates the requirements of paragraph (f) of this AD for that airplane only.

(h) After accomplishing the action required by paragraph (g) of this AD, no alternative inspections or inspection intervals may be used, unless the inspections or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, 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:* 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. Before using any approved AMOC on any airplane to which the AMOC applies, notify your

principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards 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:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(j) Refer to EASA Airworthiness Directives 2006–0225, dated July 21, 2006, and 2010–0048, dated March 19, 2010; Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006; and Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 02, dated December 16, 2009; for related information.

Issued in Renton, Washington, on July 28, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19179 Filed 8–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0225; Directorate Identifier 2009–NM–203–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers PLC Model SD3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated 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:

> Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *.
>
> * * * * *
>
> Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.
>
> * * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 30, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Short Brothers PLC, Airworthiness, P.O. Box 241, Airport Road, Belfast, BT3 9DZ Northern Ireland; telephone +44(0)2890–462469; fax +44(0)2890–468444; e-mail *michael.mulholland @aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0225; Directorate Identifier 2009–NM–203–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on March 15, 2010 (75 FR 12154). That earlier NPRM proposed to supersede AD 2006–12–18, Amendment 39–14644 (71 FR 34801, June 16, 2006), to require actions intended to address the unsafe condition for the products listed above. Since that NPRM was issued, we have determined that the original NPRM did not include all the relevant service information for the affected airplanes.

Relevant Service Information

Bombardier has issued the temporary revisions (TRs) listed in the following table.

TABLE—AMM TEMPORARY REVISIONS

Model—	Shorts temporary revision—	Dated—	To the maintenance manual (MM)—
SD3–30 airplanes	TR330–AMM–35	June 6, 2006	Shorts SD3–30 MM.
SD3–30 airplanes	TR330–AMM–36	June 6, 2006	Shorts SD3–30 MM.
SD3–SHERPA airplanes	TRSD3S–AMM–36	June 19, 2006	Shorts SD3-SHERPA MM.
SD3–SHERPA airplanes	TRSD3S–AMM–37	June 19, 2006	Shorts SD3-SHERPA MM.
SD3–60 SHERPA airplanes	TRSD360S–AMM–35	June 27, 2006	Shorts SD3–60 Sherpa MM.
SD3–60 SHERPA airplanes	TRSD360S–AMM–36	June 27, 2006	Shorts SD3–60 Sherpa MM.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Comments

We have considered the following comments received on the earlier NPRM.

Request To Include Additional Service Information

Bombardier requests that we add the TRs specified in the previous table to Table 3 of the NPRM.

We agree and have revised this supplemental NPRM accordingly.

Request To Revise Costs of Compliance

Bombardier requests that we revise the costs of compliance to account for any Model SD3–30 airplanes.

We agree that clarification may be necessary. The Costs of Compliance section accounts for 54 U.S.-registered airplanes, all of which are operated as transport category airplanes, not military airplanes.

Request To Remove Reference to Fuselage Pressure Shell

Bombardier requests that we revise paragraph (h) of the NPRM to remove reference to "longitudinal skin joints in the fuselage pressure shell." Bombardier notes that this statement is erroneous because the Model SD3 airplanes are not pressurized.

We agree with the request and have removed "pressure" from the statement from paragraph (h) of this supplemental NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **Note** within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 54 products of U.S. registry.

The actions that are required by AD 2006–12–18 and retained in this proposed AD take about 41 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $10 per product. Based on these figures, the estimated cost of the currently required actions is $3,485 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,590, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

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

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

3. 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 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:

Short Brothers PLC: Docket No. FAA–2010–0225; Directorate Identifier 2009–NM–203–AD.

Comments Due Date

(a) We must receive comments by August 30, 2010.

Affected ADs

(b) This AD supersedes AD 2006–12–18, Amendment 39–14644.

Applicability

(c) This AD applies to all Short Brothers PLC Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR [Federal Aviation Regulation] § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA [Joint Aviation Authorities] to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's [National Airworthiness Authorities] using JAR [Joint Aviation Requirement] § 25.901(c), § 25.1309.

In August 2005 EASA [European Aviation Safety Agency] published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *http://www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC [type certificate] holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations, comprising maintenance/inspection tasks and Critical Design Control Configuration Limitations (CDCCL) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

Revision History: PAD [proposed airworthiness directive] 06–018R1 has been issued to endorse comments received for PAD 06–018 and due to the change of the EASA policy statement on fuel tank safety on March 2006.

Compliance

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

Restatement of Requirements of AD 2006–12–18, With Revised Service Information

Revision of Airplane Flight Manual (AFM) With Additional AFM References in Table 1 of This AD

(g) Within 30 days after July 21, 2006 (the effective date of AD 2006–12–18), revise the Limitations and Normal Procedures sections of the AFMs as specified in Table 1 of this AD to include the information in the applicable Shorts advance amendment bulletins as specified in Table 1 of this AD. The advance amendment bulletins address operation during icing conditions and fuel system failures. Thereafter, operate the airplane according to the limitations and procedures in the applicable advance amendment bulletin.

Note 2: The requirements of paragraph (g) of this AD may be done by inserting a copy of the applicable advance amendment bulletin into the AFM. When the applicable advance amendment bulletin has been included in general revisions of the AFM, the general revisions may be inserted into the AFM and the advance amendment bulletin may be removed, provided the relevant information in the general revision is identical to that in the advance amendment bulletin.

TABLE 1—AFM REVISIONS

Airplane Model—	Shorts Advance Amendment Bulletin—	AFM—
SD3–30 airplanes	1/2004, dated July 13, 2004	SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SB.3.9.
SD3–60 airplanes	1/2004, dated July 13, 2004	SB.4.3, SB.4.6, and SB.4.8.
SD3–60 SHERPA airplanes	1/2004, dated July 13, 2004	SB.5.2 or 6.2.
SD3–SHERPA airplanes	1/2004, dated July 13, 2004	SB.6.2 or 5.2.

Revision of Airworthiness Limitation (AWL) Section

(h) Within 180 days after July 21, 2006: Revise the AWL section of the Instructions for Continued Airworthiness by incorporating airplane maintenance manual (AMM) Sections 5–20–01 and 5–20–02 as introduced by the Shorts temporary revisions (TR) specified in Table 2 of this AD into the AWL section of the AMMs for the airplane models specified in Table 2 of this AD, except as required by paragraph (j) of this AD. Thereafter, except as provided by paragraph (l)(1) of this AD, no alternative structural inspection intervals may be approved for the longitudinal skin joints in the fuselage shell.

Note 3: The requirements of paragraph (h) of this AD may be done by inserting a copy of the applicable TR into the applicable AMM. When the TR has been included in general revisions of the AMM, the general revisions may be inserted in the AMM and the TR may be removed, provided the relevant information in the general revision is identical to that in the TR.

TABLE 2—AMM TEMPORARY REVISIONS

Airplane model—	Temporary revision—	Dated—	AMM—
SD3–30 airplanes	TR330–AMM–13	June 21, 2004	SD3–30 AMM.
SD3–30 airplanes	TR330–AMM–14	June 21, 2004	SD3–30 AMM.
SD3–60 airplanes	TR360–AMM–33	July 27, 2004	SD3–60 AMM.
SD3–60 airplanes	TR360–AMM–34	July 27, 2004	SD3–60 AMM.
SD3–60 SHERPA airplanes	TRSD360S–AMM–14	July 29, 2004	SD3–60 SHERPA AMM.
SD3–60 SHERPA airplanes	TRSD360S–AMM–15	July 29, 2004	SD3–60 SHERPA AMM.
SD3–SHERPA airplanes	TRSD3S–AMM–15	July 28, 2004	SD3 SHERPA AMM.
SD3–SHERPA airplanes	TRSD3S–AMM–16	July 28, 2004	SD3 SHERPA AMM.

Resistance Check, Inspection, and Jumper Installation

(i) Within 180 days after July 21, 2006: Perform the insulation resistance check, general visual inspections, and bonding jumper wire installations; in accordance with Shorts Service Bulletin SD330–28–37, SD360–28–23, SD360 SHERPA–28–3, or SD3 SHERPA–28–2; all dated June 2004; as applicable. If any defect or damage is discovered during any inspection or check required by this AD, before further flight, repair the defect or damage using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the Civil Aviation Authority (CAA) (or its delegated agent); or EASA (or its delegated agent).

Note 4: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

New Requirements of This AD

Revision of AWL Section: New Limitations and CDCCLs

(j) Within 90 days after the effective date of this AD: Revise the AWL section of the Instructions for Continued Airworthiness by incorporating aircraft maintenance manual (AMM) Sections 5–20–01 and 5–20–02 as introduced by the Bombardier and Shorts temporary revisions (TRs) specified in Table 3 of this AD into the AWL section of the AMMs for the airplane models specified in Table 3 of this AD. Doing this revision terminates the requirement to incorporate the temporary revisions specified in paragraph (h) of this AD. After doing this revision the temporary revisions required by paragraph (h) of this AD may be removed.

TABLE 3—AMM TEMPORARY REVISIONS

Model—	Temporary revision —	Dated—	To this AMM—
SD3–30 airplanes	Shorts TR TR330–AMM–35	June 6, 2006	Shorts SD3–30 Maintenance Manual (MM).
SD3–30 airplanes	Shorts TR TR330–AMM–36	June 6, 2006	Shorts SD3–30 MM.
SD3–60 airplanes	Bombardier TR TR360–AMM–55	November 11, 2005	Bombardier SD3–60 AMM.
SD3–60 airplanes	Bombardier TR TR360–AMM–56	November 11, 2005	Bombardier SD3–60 AMM.
SD3–60 SHERPA airplanes.	Shorts TR TRSD360S–AMM–35	June 27, 2006	Shorts SD3–60 Sherpa MM.
SD3–60 SHERPA airplanes.	Shorts TR TRSD360S–AMM–36	June 27, 2006	Shorts SD3–60 Sherpa MM.
SD3–SHERPA airplanes	Shorts TR TRSD3S–AMM–36	June 19, 2006	Shorts SD3–SHERPA MM.
SD3–SHERPA airplanes	Shorts TR TRSD3S–AMM–37	June 19, 2006	Shorts SD3–SHERPA MM.

Note 5: The requirements of paragraph (j) of this AD may be done by inserting a copy of the applicable TR into the applicable AMM. When the TR has been included in general revisions of the AMM, the general revisions may be inserted in the AMM and the TR may be removed, provided the relevant information in the general revision is identical to that in the TR.

(k) After accomplishing the actions specified in paragraph (j) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC), in accordance with the procedures specified in paragraph (l) of this AD.

Explanation of CDCCL Requirements

Note 6: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the AMM, as required by paragraph (h) or (j) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the AMM has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 7: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(l) 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. Send information to *Attn:* Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards 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:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of

Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(m) Refer to MCAI EASA Airworthiness Directive 2006–0198, dated July 11, 2006; Shorts Service Bulletins SD330–28–37, SD360–28–23, SD360 SHERPA–28–3, and SD3 SHERPA–28–2, all dated June 2004; and the service information listed in Tables 1, 2, and 3 of this AD; for related information.

Issued in Renton, Washington, on July 26, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19172 Filed 8–3–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0402; Directorate Identifier 2007–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747 Airplanes and Model 767 Airplanes Equipped With General Electric Model CF6–80C2 or CF6–80A Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Model 747 airplanes and Model 767 airplanes. The original NPRM would have required revising the airplane flight manual (AFM) to advise the flightcrew to use certain procedures during descent in certain icing conditions. The original NPRM resulted from reports of several in-flight engine flameouts, including multiple dual engine flameout events and one total power loss event, in ice-crystal icing conditions. This action revises the original NPRM by revising the text of the proposed AFM revision. We are proposing this supplemental NPRM to ensure that the flightcrew has the proper procedures to follow in certain icing conditions. These certain icing conditions could cause a multiple engine flameout during flight with the potential inability to restart the engines, and consequent forced landing of the airplane.

DATES: We must receive comments on this supplemental NPRM by August 30, 2010.

ADDRESSES: You may send comments by any of the following methods:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0402; Directorate Identifier 2007–NM–165–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 747 airplanes and Model 767 airplanes. That original NPRM was published in the **Federal Register** on April 7, 2008 (73 FR 18721). That original NPRM proposed to require revising the airplane flight manual (AFM) to advise the flightcrew to use certain procedures during descent in certain icing conditions.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have received a report of another significant flameout event on a Model 747 airplane. As a result of this latest event, Boeing has revised the AFM instructions to include the activation of wing anti-ice for those altitudes where wing anti-ice can be used while still ensuring that other systems that use bleed air are adequately supplied with bleed air. Therefore, we have revised the AFM text specified in paragraph (g) of this supplemental NPRM to include this new text.

Other Relevant Rulemaking

Related NPRM, Docket FAA–2008–0403, Directorate Identifier 2007–NM–166–AD (73 FR 18719, April 7, 2008), proposed to require similar actions for Model MD–11 and MD–11F airplanes, certified in any category, equipped with General Electric (GE) CF6–80C2 series engines. These airplanes have been determined to be subject to the identified unsafe condition addressed in this supplemental NPRM.

Support for the Original NPRM

The Air Line Pilots Association, International supports the intent and language of the original NPRM. The National Transportation Safety Board (NTSB), based on the success of similar AFM requirements to address this unsafe condition on Hawker Beechcraft Corporation Model 400, 400A, and 400T series airplanes, and Model MU–300 airplanes, supports the adoption of the proposed requirements.

Request for FAA To Actively Pursue Research to Develop a Permanent Solution

The NTSB notes that the original NPRM is intended as interim action, and points out that it has issued Safety Recommendation A–06–59, dated August 25, 2006. In this safety recommendation the NTSB asked the FAA to "* * * work with engine and airplane manufacturers and other industry personnel as well as appropriate international authorities to actively pursue research to develop an ice detector that would alert pilots to internal engine icing and require that it be installed on new production turbojet engines, as well as retrofitted to existing turbojet engines." Therefore, the NTSB hopes the FAA pursues research in concert with the multi-national Aircraft Icing Research Alliance that might develop an ice detector to alert flightcrews to the accretion of ice crystals on internal engine surfaces, so that flightcrews can take the appropriate actions.

We partially agree with the commenter's request. We agree that the GE CF6–80C2 series engine needs to be modified to mitigate the risk of flameouts caused by ice crystal accretion. However, at this time, we do not agree to pursue research to develop an ice detector that would alert flightcrews to the internal engine icing, or with requiring manufacturers to install ice detectors internal to the engines. In addition, no such designs have been proposed to the FAA. Instead, for future designs, we are developing rulemaking to show acceptable engine operation in an ice crystal environment. For engines that currently demonstrate a susceptibility to ice crystals, we are working with manufacturers to develop engine design changes to make engines more robust during ice crystal accumulation and shedding encounters. We will continue to provide feedback to the NTSB through the established process for addressing safety recommendations. For this AD, if different methods to address the unsafe condition are developed, under the provisions of paragraph (i) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the method would provide an acceptable level of safety. No change to the supplemental NPRM is necessary in this regard.

Request to Require Demonstration of Non-Susceptibility in Future Designs

The NTSB states that it hopes the FAA will require future engine designs to demonstrate that they will not be susceptible to the accretion of ice crystals on internal surfaces. The NTSB points out that this request is in keeping with information provided to the NTSB by the FAA's icing expert during a briefing with the NTSB.

From these statements, we infer that the NTSB is requesting that we revise the original NPRM to include a statement of our intent to require manufacturers to demonstrate that future engine designs are not susceptible to the accretion of ice crystals. We partially agree. We agree that current FAA regulations addressing engine and airplane icing do not apply to the ice crystal environment; therefore, we are working with the aviation industry to develop appropriate regulations that address operation in an ice crystal environment. As we determine the necessary requirements to address this issue, we will consider additional rulemaking. We do not agree to revise this AD to include a statement regarding future regulations that have not yet been determined. No change to the supplemental NPRM is necessary in this regard.

Request to Withdraw the Original NPRM

GE acknowledges that a small number of inclement weather or significant weather system encounters have resulted in short-duration multiple engine power loss. GE points out that these few events occurred out of 14 million flights over 20 years of total service experience on the Model CF6–80C2 series engine. GE states that a forced landing resulting from one of these in-flight ice-crystal icing events is extremely improbable (including demonstrated relight performance). Therefore, GE asserts that the proposed condition does not meet the definition of "unsafe condition," as defined by FAA Advisory Circular 39–8, "Continued Airworthiness Assessments of Powerplant and Auxiliary Power Unit Installations of Transport Category Airplanes," dated September 8, 2003.

From these statements, we infer that GE requests that we withdraw the original NPRM. We do not agree. We have evaluated the unsafe condition and find that sufficient data exist to demonstrate that the environment that causes the engine flameout would likely cause engine damage that potentially would prevent an engine from relighting. The condition could exist on all of an airplane's engines, resulting in a forced landing. The advisory circular referenced by the commenter merely provides guidance. We have determined that an unsafe condition exists, and the appropriate vehicle for correcting an unsafe condition is an AD. We have not changed the supplemental NPRM regarding this issue.

Request to Delay Issuance of AD Until New Software Modification Is Implemented

Lufthansa Technik (Lufthansa) suggests that the AD be postponed until a new electronic control unit (ECU) software modification has been implemented, and GE can present data to operators to show the need to mandate the proposed procedures. Lufthansa asserts that GE did not provide data to the airlines on how many flameout events have occurred. Consequently, Lufthansa states that its flightcrews have not used the procedure specified in the original NPRM. Lufthansa points out that it is usually common sense to use the proposed procedure; therefore, it is hard to understand why the proposed procedure will now be mandatory.

We do not agree to delay issuance of this action. We do not consider that delaying this action until after the release of a possible software revision is warranted. As Lufthansa points out, while the proposed procedure might be common sense to some, most flightcrews are not using the proposed procedure; therefore, as stated previously, we have found that ECU software logic alone does not provide an acceptable level of safety. We have determined that the in-flight anti-ice activation procedures in combination with the electronic engine control (EEC) software are necessary to mitigate the unsafe condition. However, under the provisions of paragraph (i) of the supplemental NPRM, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We find that delaying this action would be inappropriate in light of the identified unsafe condition, and have made no change to this supplemental NPRM in this regard.

Request to Revise Related AD To Reduce Compliance Time

Global Supply Systems (Global) requests that we revise AD 2007–12–07, Amendment 39–15085 (72 FR 31174, June 6, 2007), to require a much earlier compliance time for the software update required by that AD. That AD applies to GE Model CF6–80C2B series turbofan engines with ECUs installed on Model 747 and 767 airplanes. Global explains that GE has two engine software revisions to the EEC bleed scheduling, which, while not preventing flameouts

from occurring, do appear to mitigate the effect. Global notes that the later software revision is subject to AD 2007–12–07, which requires compliance by July 10, 2012. Global reasons that software upgrades are required only on workshop visits for unserviceability or engine change, and with current serviceability levels, the mandatory upgrading of current equipment is extremely slow, leading to substantial levels of unmodified software installed on airplanes. Global asserts that, while this problem increases pressure to introduce procedures to alleviate the problem, it does not adequately address the improvement in safety that would be incumbent on bringing the compliance date of AD 2007–12–07 forward to require use of a programmed upgrade of the EEC software.

We do not agree to change the compliance time for the actions required by AD 2007–12–07. In developing an appropriate compliance time for the requirements of that AD, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the requirements of that AD. In consideration of all of these factors, we determined that the compliance time required by that AD represents an appropriate interval in which the software can be updated in a timely manner within the fleet, while still maintaining an adequate level of safety. However, operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to update the software, as required by that AD, before the required compliance date specified in that AD. If additional data are presented that would justify a shorter compliance time, we might consider further rulemaking on this issue. We have made no change to this supplemental NPRM in this regard.

Request to Remove GE Model CF6–80A Series Engines

GE Aviation (GE) suggests removing all references to GE Model CF6–80A series engines from the original NPRM. GE states that it is not aware of any confirmed engine flameout events related to GE Model CF6–80A series engines due to ice-crystal icing conditions. GE explains that this might be due to several factors:

- A significantly different type-design booster from that of the GE Model CF6–80C2 series engines (GE Model CF6–80A series engines have fewer rotor and booster stages, with 30 percent fewer airfoils, resulting in significantly reduced potential accretion sites than the GE Model CF6–80C2 series engines);
- A significantly different variable bleed valve system (especially the exit path); and
- A purely hydro-mechanical (power management control with mechanical engine control) fuel control system, where as GE Model CF6–80C2 series engines have predominantly FADEC control with different fueling schedules and response characteristics.

From these statements, we infer that GE is requesting that we remove airplanes equipped with GE Model CF6–80A series engines from the applicability of this supplemental NPRM. We do not agree. Although there have been no recorded flameout events related to GE Model CF6–80A series engines, flightcrews are not required to determine which model of engine is installed on the airplane. Therefore, it is possible that the flightcrew would not perform the necessary AFM procedure because the flightcrew is unaware of the engine model that is installed on the airplane they are flying. However, under the provisions of paragraph (i) of this supplemental NPRM, we will consider requests for approval of an AMOC for airplanes equipped with GE Model CF6–80A series airplanes if sufficient data are submitted to substantiate an acceptable level of safety. We have made no change to this supplemental NPRM in this regard.

Request to Acknowledge No Flameout Events on GE Model CF6–80A Series Engines

Boeing states that the FAA should revise the Discussion section of the original NPRM to acknowledge that there have been no flameout events recorded on GE Model CF6–80A series engines. While this engine has a similar compressor design, Boeing believes it has certain design features (including the VBV door geometry and schedule), which might explain why it does not have flameout events. Boeing asserts that operators of airplanes equipped with GE Model CF6–80A series engines might desire to ask for an AMOC with this AD for those airplanes.

We partially agree. We agree that there have been no recorded flameout events to date on GE Model CF6–80A series engines during ice-crystal icing conditions. However, as previously noted, the Discussion section in the original NPRM is not restated in this supplemental NPRM; therefore, there is no need to revise the supplemental NPRM in this regard.

Request to Revise Wording in the Discussion Section of the Original NPRM

GE suggests that we revise the wording of the Discussion section of the original NPRM to remove the word "core," or, if that is not acceptable, to change "core flow path" to "booster and core flow path." GE points out that the term "core" can be interpreted to mean just the high-pressure spool portion of a turbofan.

We partially agree. We do not agree with GE's suggestion to remove the word "core" from the Discussion section. We do agree that the phrase "booster and core flow path" is more accurate; however, because the Discussion section of the original NPRM is not restated in this supplemental NPRM, there is no need to revise the supplemental NPRM in this regard.

GE also suggests that we revise the Discussion section of the NPRM to remove the following sentence: "The GE CF6–80C2 and CF6–80A series engines models have similar compressor designs." GE suggests removing this sentence for the same reasons it requests that we remove GE Model CF6–80A series engines from the applicability of the original NPRM. Or, if we do not agree to remove that sentence, GE proposes that we revise that sentence to clarify the statement of similarity of compressor designs of the GE Model CF6–80A and CF6–80C2 series engines. GE proposes changing the sentence to read, "The GE CF6–80C2 and CF6–80A series engines models have different booster and VBV system designs, but similar compressor designs."

We partially agree. We do not agree with GE's suggestion to remove the subject sentence from the Discussion section. We do agree that the revised wording suggested by GE is more accurate; however, as previously noted, the Discussion section in the original NPRM is not restated in this supplemental NPRM, therefore, there is no need to revise the supplemental NPRM in this regard.

GE also believes that, in the Discussion section of the original NPRM, the reference to "−40 °C" in the explanation of conditions for activating engine anti-ice on airplanes equipped with a primary in-flight ice detection system should be changed to "SAT −40 °C."

From this statement, we infer that GE is requesting that we revise the Discussion section of the original NPRM to clarify the referenced temperature. We partially agree. We agree that the temperature should be "SAT −40 °C." However, as previously noted, the

Discussion section in the original NPRM is not restated in this supplemental NPRM, there is no need to revise the supplemental NPRM in this regard.

Request to Revise the Costs of Compliance Section of the NPRM

GE suggests that there should be an operational cost of compliance included in the proposed Costs of Compliance provided in the original NPRM. GE states that, while increasing engine off-take or bleed does provide additional margin against flameout, doing so requires somewhat increased fuel burn. GE believes the proposed procedure would be required on a significant percentage of flights, and estimates that the incremental fuel required is around 100 pounds of fuel per flight for Model 747 airplanes, but less for Model 767 airplanes.

We do not agree to include an operational cost. The cost information in AD actions describes only the direct costs of the specific actions required by the AD: an AFM revision in this case. The estimated cost of this action represents the time necessary to perform only the actions actually required by this supplemental NPRM. We recognize that, in doing the actions required by an AD, operators might incur operational costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental or operational costs such as the time required for planning or other administrative actions, and, in this case, possible additional fuel costs. Those costs, which might vary significantly among operators, are almost impossible to calculate. Additionally, we have determined that the additional fuel burn necessitated by the AFM procedure would be insignificant. We have not changed the supplemental NPRM in this regard.

Request to Remove Nacelle Anti-Ice Requirement in Certain Icing Conditions

Global requests that we revise the original NPRM to remove the proposed requirement to select manual nacelle anti-ice in visible moisture below a total air temperature (TAT) of 10 °Celsius (C) during descent at lower altitudes (*e.g.,* Flight Level (FL) 100). Global states that its primary area of operation includes a high proportion of flights in regions that have been particularly affected by ice crystal accretion incidents, so it is concerned about the risks involved with the identified unsafe condition. However, although Global understands and supports measures to reduce the risks associated with ice-crystal icing, it considers forcing use of manual nacelle anti-ice during descent in visible moisture to be too prescriptive and deleterious to safety.

First, Global points out that the proposed procedure is required irrespective of altitude, and that nacelle anti-ice will frequently be unnecessarily required to be selected "ON," particularly at lower altitudes where ice crystal ingestion and subsequent flameout have not been experienced.

Second, Global explains that its flightcrews have become accustomed to using automatic ice detection and are therefore less familiar with the detection of conditions requiring the manual selection of nacelle anti-ice. For this reason, Global asserts that there will be an increase in the flightcrew's workload during descent as the external ambient conditions are assessed more frequently, especially at lower altitudes where air traffic control and approach procedures generate a higher workload.

Third, Global states that increase in idle thrust level dependant on engine anti-ice increases the required descent distance. Global declares that the use of the flight management computer's (FMC's) descent predictions is essential for environmental and economic reasons to minimize fuel usage. Because descent is predicated on not using the nacelle anti-ice, requiring use of the nacelle anti-ice will negate this prediction. Although the FMC can be programmed to account for the effect of using nacelle anti-ice below an entered altitude, this method is not efficient and would either cause the airplane to become high and fast because of inadequate distance for descent, or, conversely, cause the airplane to descend too early, increasing fuel usage and noise disturbance.

Fourth, Global states that it is aware of a similar process requiring manual activation of nacelle anti-ice on a different airplane/engine combination, which also suffers from ice crystal accretion. Global points out that process allows reversion to auto nacelle anti-ice below 10,000 feet.

We do not agree to remove the proposed requirement to select manual nacelle anti-ice in visible moisture below a TAT of 10 °C during descent at lower altitudes (e.g., 10,000 feet). Contrary to Global's assertion that flameout caused by ice-crystal icing has not been experienced at lower altitudes, flameouts at altitudes lower than 10,000 feet have occurred as a result of ice-crystal icing.

We recognize that the descent phase of flight requires a higher level of workload for the flightcrew; however, icing can occur at any altitude at any time, and is most common in descents as the airplane passes through visible moisture. As we explained in the original NPRM, ice-crystal icing does not appear on radar due to its low reflectivity, and the airplane ice detector does not detect the presence of these specific icing conditions. Therefore, ice-crystal icing is often undetected by the flightcrew. Although these specific icing conditions are difficult to detect, all pilots should know what visible moisture is and how to recognize it without significant impact to flightcrew workload. In fact, all pilots need be cognizant of the conditions they are flying in and be capable of reacting to those conditions, regardless of the phase of flight.

The requirement to activate the engine anti-ice prior to descent in visible moisture with TAT less than 10 °C and greater than saturated air temperature (SAT) −40 °C already exists for airplanes that are not equipped with a primary in-flight ice detection system, which is designed to automatically activate wing anti-ice and engine anti-ice when the airplane is in icing conditions. However, the primary in-flight ice detection system does not detect ice-crystal icing; therefore, the engine anti-ice would not be activated during these icing encounters. There is no requirement to activate engine anti-ice at temperatures below SAT −40 °C, and this proposed AD would require activation of engine anti-ice at temperatures below SAT −40 °C. Activating the engine anti-ice increases the flameout margin and reduces the potential for multiple engine flameouts by increasing bleed flow and idle speed. As far as Global's assertion that use of manual nacelle anti-ice will increase fuel usage, we have confirmed that any increase in fuel usage caused by use of manual nacelle anti-ice would be insignificant. Engine anti-ice also assists with relighting the engines by turning on the igniters on airplanes that are not equipped with autorelight. We have determined that FMC software logic alone does not provide an adequate level of safety in lieu of manual anti-ice activation in ice-crystal icing conditions.

For the reasons discussed previously, we have concluded that requiring selection of manual nacelle anti-ice in visible moisture below a TAT of 10 °C during descent at lower altitudes does increase safety and does not impose undue burdens on operators. We have made no change to the supplemental NPRM in this regard.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we might consider further rulemaking then.

Explanation of Additional Paragraph in the Supplemental NPRM

We have added a new paragraph (d) to this supplemental NPRM to provide the Air Transport Association (ATA) of America subject code 30: Ice and rain protection. This code is added to make this supplemental NPRM parallel with other new AD actions. We have reidentified subsequent paragraphs accordingly.

Explanation of Change Made to the Supplemental NPRM

We have revised this supplemental NPRM to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

There are about 1,064 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision	1	$85	$0	$85	340	$28,900

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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

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

3. 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

The Boeing Company: Docket No. FAA–2008–0402; Directorate Identifier 2007–NM–165–AD.

Comments Due Date

(a) We must receive comments by August 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747 airplanes and Model 767 airplanes, certified in any category, equipped with General Electric Model CF6–80C2 or CF6–80A series engines.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and rain protection.

Unsafe Condition

(e) This AD results from reports of several in-flight engine flameouts, including multiple dual engine flameout events and one total power loss event, in ice-crystal icing conditions. We are issuing this AD to ensure that the flightcrew has the proper procedures to follow in certain icing conditions. These certain icing conditions could cause a multiple engine flameout during flight with the potential inability to restart the engines, and consequent forced landing of the airplane.

Compliance

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

Airplane Flight Manual (AFM) Revision

(g) Within 14 days after the effective date of this AD, revise the Limitations Section of the Boeing 747 or 767 AFM, as applicable, to include the following statement. This may be

done by inserting a copy of this AD into the AFM.

"Prior to descent in visible moisture and TAT less than 10 °C, including SAT less than −40 °C, nacelle anti-ice switch must be in the ON position. At or below 22,000 ft, wing anti-ice selector must be in the ON position."

Note 1: When a statement identical to that in paragraph (g) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Special Flight Permits

(h) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished provided the operational requirements defined in the Limitations Section of the AFM are used if icing is encountered.

Alternative Methods of Compliance (AMOCs)

(i)(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. Send information to *Attn:* Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on July 27, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19154 Filed 8–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0670; Directorate Identifier 2007–NM–339–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–111 and A318–112 Airplanes and Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated 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:

Damage to the lower lateral fittings of the 80VU rack, typically elongated holes, migrated bushes [bushings], and/or missing bolts have been reported in-service. In addition damage to the lower central support fitting (including cracking) has been reported.

In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 30, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0670; Directorate Identifier 2007–NM–339–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on June 24, 2008 (73 FR 35601). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0276R1, dated March 18, 2010 (corrected April 12, 2010) (referred to after this as "the MCAI"), to revise EASA AD 2007–0276, dated October 26, 2007, which we referred to in the NPRM. The MCAI adds an optional terminating action to the repetitive inspections. The MCAI states:

> Damage to the lower lateral fittings of the 80VU rack, typically elongated holes, migrated bushes [bushings], and/or missing bolts have been reported in-service. In addition damage to the lower central support fitting (including cracking) has been reported.
>
> In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.
>
> For the reasons described above, EASA AD 2007–0276 was issued to require repetitive [detailed] inspection of the lower lateral 80VU fittings for damage and [repetitive detailed] inspection of the lower central 80VU support for damage and cracking, and the accomplishment of associated corrective actions, depending on findings.
>
> Since AD 2007–0276 was issued, Airbus introduced a new reinforced lower central support for the 80VU.
>
> This [EASA] AD has been revised to introduce the new reinforced lower central support as an optional terminating action to the repetitive inspections.
>
> * * * * *

The associated corrective actions include repair or replacement of the lower lateral fittings and/or replacement of the lower central support. Modifying the 80VU lower lateral fittings (the modification includes replacing the 80VU lower lateral fittings) eliminates the need for the repetitive inspection of the lower lateral fittings. Replacing the 80VU lower central support (*i.e.,* replacing the pyramid fitting on the 80VU rack with a new, reinforced fitting) eliminates the need for the repetitive inspection of the lower central support. You may obtain further information by examining the MCAI in the AD docket.

Also, we have determined that for any cracking found during an inspection specified in paragraph (i) of this supplemental NPRM (referred to as paragraph (f)(3) in the NPRM), the corrective action specified in paragraph (j) of this supplemental NPRM (referred to as paragraph (f)(4) in the NPRM) must be done before further flight. Our policy specifies the requirement to repair known cracks before further flight (though we might make exceptions to this policy in certain cases of unusual need, as discussed below). This policy is based on the fact that such damaged airplanes do not conform to the FAA-certificated type design and, therefore, are not airworthy until a properly approved repair is made. We consider the compliance times in this AD to be adequate to allow operators to acquire parts to have on hand in the event that a crack is detected during inspection. Therefore, we have determined that, due to the safety implications and consequences associated with such cracking, any subject 80VU rack lower central support that is found to be cracked must be replaced or modified before further flight.

Also, since the NPRM was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this supplemental NPRM.

Comments

We have considered the following comments received on the earlier NPRM.

Requests To Include Optional Terminating Action

Northwest Airlines, and Air Transport Association (ATA) on behalf of its members United Airlines and US Airways, request that we refer to a new Airbus service bulletin under development that provides a permanent terminating action for the central support fitting. United points out that the terminating action is preferable because the inspection proposed in the NPRM is intrusive to aircraft systems and very time consuming.

We agree with the commenters' request to refer to the new Airbus service information as the appropriate source of service information for modification of the central support. Since issuance of the NPRM, Airbus has issued Service Bulletin A320–53–1215, dated November 5, 2008. That service bulletin describes procedures for replacing the lower central support of the 80VU rack with a new, reinforced support. We have added paragraph (k) to this supplemental NPRM to specify that doing this replacement terminates the requirements of paragraphs (g) and (i) of this AD. We have also revised paragraph (d) of this supplemental NPRM to include reference to the ATA Code 53: Fuselage, which is the subject of Airbus Service Bulletin A320–53–1215, dated November 5, 2008.

Explanation of Additional Revised Service Information

Since we issued the NPRM, Airbus has issued Mandatory Service Bulletin A320–25A1555, Revision 01, including Appendix 1, dated February 18, 2008; and Mandatory Service Bulletin A320–25A1555, Revision 02, including Appendix 1, dated November 5, 2008. Airbus has also issued Service Bulletin A320–25–1557, Revision 01, dated February 7, 2008; and Service Bulletin A320–25–1557, Revision 02, dated November 5, 2008. (We referred to Airbus Service Bulletins A320–25A1555 and A320–25–1557, both dated June 14, 2007, in the NPRM as the appropriate source of service information for doing the proposed actions.) Airbus issued Revision 01 of those service bulletins to include minor improvements in the procedures. Airbus issued Revision 02 of those service bulletins to include a reference to the terminating action specified in Airbus Service Bulletin A320–53–1215, dated November 5, 2008.

No additional work is necessary for airplanes on which any revision of these service bulletins has been accomplished before the effective date of this AD; therefore, we have revised paragraphs (g) and (n) of this supplemental NPRM to refer to Revision 02 of Airbus Service Bulletins A320–25A1555 and A320–25–1557. We have also revised paragraphs (h) and (i) of this supplemental NPRM to refer to Revision 02 of Airbus Mandatory Service Bulletin A320–25A1555. We have also revised this supplemental NPRM to include a new paragraph (l) to give credit for actions accomplished before the effective date of this AD in accordance with the Airbus service bulletins listed in Table 1 of this AD.

Clarification of Repetitive Interval

We have revised the repetitive interval specified in paragraph (g)(2) of this supplemental NPRM (referred to as paragraph (f)(1)(i) in the NRPM) to specify that the next inspection must be done within 24,000 flight cycles after doing the replacement and thereafter the

inspection must be done at intervals not to exceed 4,500 flight cycles. Paragraph (f)(1)(ii) of the NPRM specified a repetitive interval of 24,000 flight cycles for airplanes on which the repair (replacement) had been done. However, after exceeding 24,000 flight cycles since the replacement, the inspections must be done at intervals not to exceed 4,500 flight cycles in order to adequately address the identified unsafe condition.

We have also revised the repetitive interval specified in paragraph (i)(2) of this supplemental NPRM (referred to as paragraph (f)(3)(ii) in the NRPM) to specify that the next inspection must be done within 24,000 flight cycles after doing the repair or replacement and thereafter the inspection must be done at the applicable intervals specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD. Paragraph (f)(3)(ii) of the NPRM specified a repetitive interval of 24,000 flight cycles for airplanes on which the repair or replacement had been done. However, after exceeding 24,000 flight cycles since the repair or replacement, the inspections must be done within the applicable intervals specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD in order to address the identified unsafe condition.

We have also revised paragraphs (i)(1)(i) and (i)(1)(ii) of this AD (referred to as paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of the NPRM) by removing the phrase "as of the effective date of the AD." The repetitive intervals specified in those paragraphs are not dependent on how many flight cycles the support has accumulated as of the effective date of the AD, e.g., for a lower central support that has accumulated 23,000 total flight cycles (at the time the inspection specified in paragraph (i) is done), the inspection should be repeated at intervals not to exceed 4,500 flight cycles until the lower central support has accumulated 30,000 total flight cycles and then the inspection should be repeated at intervals not to exceed 500 flight cycles.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 678 products of U.S. registry. We also estimate that it would take about 82 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,592 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,483,036, or $9,562 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Airbus: Docket No. FAA–2008–0670; Directorate Identifier 2007–NM–339–AD.

Comments Due Date

(a) We must receive comments by August 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–

132, A319–133, A320–111, A320–211, A320–212, A320–214, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes, certificated in any category, all manufacturer serial numbers, except airplanes on which Airbus Modification 34804 has been embodied in production or on which Airbus Service Bulletins A320–25–1557 and A320–53–1215 have been done in service.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings, and Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Damage to the lower lateral fittings of the 80VU rack, typically elongated holes, migrated bushes [bushings], and/or missing bolts have been reported in-service. In addition damage to the lower central support fitting (including cracking) has been reported.

In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.

* * * * *

Compliance

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

Repetitive Inspections of the 80V Rack Lower Lateral Fittings

(g) Prior to the accumulation of 24,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Do a special detailed inspection of the 80VU rack lower lateral fittings for damage (*e.g.,* broken fitting, missing bolts, migrated bushings, material burr, or rack in contact with the fitting) of the 80VU rack lower lateral fittings, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–25A1555, Revision 02, dated November 5, 2008. Repeat the inspection thereafter at the interval specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. Modifying the 80VU lower lateral fittings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1557, Revision 02, dated November 5, 2008, terminates the inspection requirements of this paragraph.

(1) For airplanes on which the 80VU rack lower lateral fittings have not been replaced in accordance with the Airbus Mandatory Service Bulletin A320–25A1555: Repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles.

(2) For airplanes on which the 80VU rack lower lateral fittings have been replaced in accordance with Airbus Mandatory Service Bulletin A320–25A1555: Do the next inspection within 24,000 flight cycles after doing the replacement and repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles.

(h) If any damage is found during any inspection required by paragraph (g) of this AD, do all applicable corrective actions (inspection and/or repair) in accordance with the Accomplishment Instructions and timeframes given in Airbus Mandatory Service Bulletin A320–25A1555, Revision 02, dated November 5, 2008.

Repetitive Inspections of the 80V Rack Lower Central Support

(i) Prior to the accumulation of 24,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Do a special detailed inspection of the 80VU rack lower central support for cracking, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–25A1555, Revision 02, dated November 5, 2008. Repeat the inspection thereafter at the interval specified in paragraph (i)(1) or (i)(2) of this AD, as applicable. Replacing the pyramid fitting on the 80VU rack with a new, reinforced fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1215, dated November 5, 2008, terminates the inspection requirements of this paragraph.

(1) For airplanes on which the 80VU rack lower central support has not been repaired or replaced in accordance with Airbus Mandatory Service Bulletin A320–25A1555 or Airbus Service Bulletin A320–25–1557: Repeat the inspection thereafter at the interval specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD, as applicable.

(i) For airplanes on which the lower central support has accumulated 30,000 total flight cycles or more: At intervals not to exceed 500 flight cycles.

(ii) For airplanes on which the lower central support has accumulated less than 30,000 total flight cycles: At intervals not to exceed 4,500 flight cycles, without exceeding 30,750 total flight cycles on the support for the first repetitive inspection.

(2) For airplanes on which the 80VU rack lower central support has been repaired or replaced in accordance with Airbus Mandatory Service Bulletin A320–25A1555 or Airbus Service Bulletin A320–25–1557: Do the next inspection within 24,000 flight cycles after the repair or replacement and thereafter repeat the inspection at the interval specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD, as applicable.

(j) If any crack is found during any inspection required by paragraph (i) of this AD, before further flight, replace the pyramid fitting on the 80VU rack with a new, reinforced fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1215, dated November 5, 2008. Doing this replacement terminates the inspection requirements of paragraph (i) of this AD.

Optional Terminating Action

(k) Doing the actions specified in paragraphs (k)(1) and (k)(2) of this AD terminates the requirements of paragraphs (g) and (i) of this AD.

(1) Replacing the pyramid fitting on the 80VU rack with a new, reinforced fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1215, dated November 5, 2008.

(2) Modifying the 80VU lower lateral fittings, in accordance with Airbus Service Bulletin A320–25–1557, Revision 02, dated November 5, 2008.

Credit Service Bulletins

(l) Actions done before the effective date of this AD in accordance with the service information identified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 1—PREVIOUS REVISIONS OF SERVICE INFORMATION

Service information	Revision level	Date
Airbus Mandatory Service Bulletin A320–25A1555	01	February 18, 2008.
Airbus Service Bulletin A320–25A1555	Original	June 14, 2007.
Airbus Service Bulletin A320–25–1557	Original	June 14, 2007.
Airbus Service Bulletin A320–25–1557	01	February 7, 2008.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, (j) of this AD requires that you do a corrective action before further flight.

(2) Although the MCAI specifies doing a repair or replacement and repetitive inspections after the repair or replacement is done if cracking is found in the 80VU rack lower central support, paragraph (j) of this AD requires that you perform a replacement, which eliminates the need for further repetitive inspections of the part.

Other FAA AD Provisions

(m) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards 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:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(n) Refer to MCAI EASA Airworthiness Directive 2007–0276R1, dated March 18, 2010 (corrected April 12, 2010), and the service information identified in Table 2 of this AD, for related information.

TABLE 2—RELATED SERVICE INFORMATION

Service information	Revision level	Date
Airbus Mandatory Service Bulletin A320–25A1555	02	November 5, 2008.
Airbus Service Bulletin A320–25–1557	02	November 5, 2008.
Airbus Service Bulletin A320–53–1215	Original	November 5, 2008.

Issued in Renton, Washington, on July 27, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19144 Filed 8–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–156–FOR; OSM 2010–0004]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of an amendment to the Pennsylvania program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) (Administrative Record No. 888.00). The revisions to the regulations specifically address fourteen required program amendments and the remining financial guarantee program, thereby addressing a portion of the Pennsylvania regulatory provisions that were previously determined not to be approvable. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations. This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time September 3, 2010. If requested, we will hold a public hearing on August 30, 2010. We will accept requests to speak until 4 p.m., local time on August 19, 2010.

ADDRESSES: You may submit comments, identified by "PA–156–FOR; Docket ID: OSM–2010–0004" by either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID: OSM–2010–0004. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, PA 17101.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at *http://www.regulations.gov*, information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Pittsburgh Field Division Office.

George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101, *Telephone:* (717) 782–4036, *E-mail: grieger@osmre.gov;*

William S. Allen Jr., Acting Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, *Telephone:* (717) 787–5015, *E-mail: wallen@state.pa.us.*

FOR FURTHER INFORMATION CONTACT: George Rieger, *Telephone:* (717) 782–4036. *E-mail: grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior

conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Description of the Amendment

By letter dated March 17, 2010, Pennsylvania sent us an amendment to its program, Administrative Record Number 888.00, under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania's submittal is intended to address fourteen required amendments found at 30 CFR 938.16 (rr), (tt), (uu), (vv), (ww), (xx), (zz), (aaa), (ccc), (iii), (jjj), (nnn), (ppp), and (ttt). It is also intended to address a partial disapproval of a 1998 submission that included regulations about remining financial guarantees, which is found at 30 CFR 938.12(c)(3).

Required Amendments at 30 CFR 938.16

The required amendments at 30 CFR 938.16 require Pennsylvania to submit proposed amendments to:

(rr) section 86.36(c) to require permit denial for unabated violations of any Federal or State program under SMCRA, without the three-year limitation.

(tt) section 86.37(a)(10) to require that all violations of the Federal SMCRA and all programs approved under SMCRA be considered in determining whether there is a demonstrated pattern of willful violations.

(uu) section 86.37(a) to require that the criteria upon which the regulatory authority bases its decision to approve or deny a permit application are based on all information available to the regulatory authority.

(vv) section 86.37(a) to include language that would prohibit permit approval if the applicant or anyone linked to the applicant through the definition of "owned or controlled" or "owns or controls" has forfeited a bond and the violation upon which the forfeiture was based remains unabated.

(ww) sections 86.37(a)(9) and (a)(16) to require denial of a permit if it finds that those linked to the applicant through the definition of "owned or controlled" or "owns or controls" are delinquent in payment of abandoned mine reclamation fees or delinquent in the payment of State and Federal final civil penalty assessments.

(xx) section 86.37(c) to require that the regulatory authority's reconsideration of its decision to approve the permit include a review of information, updated for the period from permit approval to permit issuance, pertaining to the payment of abandoned mine reclamation fees and civil penalty fees and the status of unabated violations upon which a bond forfeiture was based.

(zz) section 86.62(b)(2)(ii) to correct the cross-reference to section 86.63 with a reference to section 86.212(c).

(aaa) sections 86.62(c) and 87.14(3) to include the requirement that the application include the address for each permit held by a related entity or company, and identification of the regulatory authority for such permit.

(ccc) section 86.133(f) to require that exploration on areas designated as unsuitable for mining shall be subject to permitting requirements no less effective than the Federal regulations at 30 CFR 772.12.

(iii) section 87.112(c) and 89.111(c) to require a seismic safety factor of at least 1.2 for all impoundments that meet the criteria of 30 CFR 77.216(a) or are located where failure could cause loss of life or serious property damage.

(jjj) section 90.112(c)(2) to require that all impounding structures that meet the criteria of 30 CFR 77.216(a) and are either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway capacity and/or storage capacity to safely pass or control the runoff from the 6-hour PMP or greater precipitation event.

(nnn) section 86.159(1)(2) to require two officer signatures for each corporate indemnitor, an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws, and documents that evidence the authority of the signatories to bind the corporation and an authorization by the parent corporation to enter into the indemnity agreement.

(ppp) section 86.5(m), or otherwise amend its program, to provide for notification of the operator and any intervenors of a decision not to revoke an exemption.

(ttt) sections 88.321 and 90.133, or otherwise amend its program to require that no noncoal waste be deposited in a coal refuse pile or impounding structure.

Pennsylvania Response to Required Amendments at 30 CFR 938.16

The provisions of the Pennsylvania rules that Pennsylvania proposes to revise and/or add are found at 25 Pennsylvania Code. The following is a summary of the regulatory changes being proposed to address program deficiencies noted at 30 CFR 938.16.

Section 86.1, Definitions

The Noncoal Surface Mining and Reclamation Act is being added to the list for the definition of Acts. When Chapter 86 was promulgated in 1983, noncoal mining was regulated under the authority of the Surface Mining Conservation and Reclamation Act (SMCRA). In 1984, the Noncoal Surface Mining Conservation and Reclamation Act (NSMCRA) was enacted, superseding the role of SMCRA for noncoal mining. In order to comply with Federal program requirements (and to have an effective regulatory program) relating to incidental extraction of coal under noncoal mining permits, it is necessary to include NSMCRA in the applicable Acts. This amendment addresses the requirement set forth at 30 CFR 938.16 (tt).

The definition of "owned or controlled" and "owns or controls" is being corrected to include the current reference to the Federal regulations relating to definitions. This addresses Federal regulation revisions that resulted in the definition being placed in a different section of the State program.

Section 86.5, Extraction of Coal Incidental to Noncoal Surface Mining

Section 86.5(m) is amended to add the requirement for the Department to notify interested parties in the case that the Department decides not to revoke an exemption from the coal permitting requirements. This amendment addresses the requirement set forth at 30 CFR 938.16 (ppp).

Section 86.36, Review of Permit Applications

Section 86.36 is amended to delete the three-year time limitation for the review of an outstanding Federal violation. This amendment addresses the requirement set forth at 30 CFR 938.16 (rr).

Section 86.37, Criteria for Permit Approval or Denial

Section 86.37(a)(8) is amended to include a reference to the Federal definition of a violation. This amendment was required by the Federal requirement set forth at 30 CFR 938.16 (ww). This amendment also addresses the deficiencies set forth at 30 CFR 938.16 (uu), (vv), and (xx).

Section 86.62, Identification of Interests

Section 86.62(b)(2)(ii) is being amended to correct the reference to the Federal minimum enforcement action.

This amendment addresses the requirement set forth at 30 CFR 938.16(zz).

Section 86.62(c) is being amended to include the permittee name and address as required information relating to permits for related entities and to clarify that issued permits must be reported as part of an application. This amendment addresses the requirement set forth at 30 CFR 938.16 (aaa).

Section 86.103(g), Procedure; Section 86.129, Coal Exploration on Areas Designated as Unsuitable for Surface Mining Operations; and Section 86.133, General Requirements

Section 86.103(g) is being added to require that the procedures for processing an assertion of Valid Existing Rights (VER) follow the Federal requirements by incorporating the Federal procedural requirements by reference.

Section 86.129(b) is being amended to provide specific procedures and requirements for permit applications for exploration activities on lands designated as unsuitable for mining. The detailed requirements mirror the Federal procedures and standards for approval. This amendment also results in the renumbering of current subsections 86.129(b)(1) and 86.129(b)(2).

Section 86.133(f) is being amended to clarify that a permit is required for exploration activities on lands designated as unsuitable for mining.

These amendments address the requirements set forth at 30 CFR 938.16(ccc).

Section 86.159, Self-Bonding

Section 86.159(l)(1) is amended to incorporate the language in the Federal regulations regarding the indemnification of self-bonds in the case of a corporate applicant that has a parent company. This amendment addresses the requirement set forth at 30 CFR 938.16(nnn).

Section 87.112, Hydrologic Balance: Dams, Ponds, Embankments and Impoundments—Design, Construction and Maintenance and Section 89.111, Large Impoundments

Section 87.112(c) is amended to add a requirement to protect miners or the public. Section 87.112(c)(1) is amended to add the required seismic safety factor.

Section 89.111(c) is amended to add a requirement to protect miners or the public. Section 89.11(c)(1) is amended to add the required seismic safety factor.

These amendments address the requirement set forth at 30 CFR 938.16(iii).

Section 88.321, Disposal of Noncoal Wastes and Section 90.133, Disposal of Noncoal Wastes

Section 88.321 is amended to include all noncoal wastes and to apply the prohibition to impoundments.

Section 90.133 is amended to include all noncoal wastes and to apply the prohibition to impoundments.

These amendments address the requirements set forth at 30 CFR 938.16(ttt).

Section 90.112, Hydrologic Balance: Dams, Ponds, Embankments and Impoundments—Design, Construction and Maintenance

Section 90.112(c) is amended to add a requirement to protect miners or the public. Section 90.112(c)(2) is amended to match the language in the Federal regulations regarding spillway capacity for large impoundments at coal refuse disposal sites. These amendments address the requirements set forth at 30 CFR 938.16 (jjj).

OSM Partial Disapproval of 1998 Regulatory Amendment Found at 30 CFR 938.12(c)(3)

We did not approve a provision of a proposed program amendment that Pennsylvania submitted on December 18, 1998, regarding 25 Pa Code 86.281(e). The last sentence which states, "If the actual cost of reclamation by the Department exceeds the amount reserved, additional funds from the Remining Financial Assurance Fund will be used to complete reclamation" was not approved.

Pennsylvania's Response to the OSM Disapproval at 30 CFR 938.12(c)(3)

The provisions of the Pennsylvania rules that Pennsylvania proposes to revise and/or add are found at 25 Pennsylvania Code. The following regulatory changes are being made to the remining financial guarantee program and should address the portion of 25 Pa Code 86.281(e) that was not approved as documented at 30 CFR 938.12(c)(3).

Section 86.165, Failure to Maintain Proper Bond

Section 86.165(a) is amended to add that an operator's obligation to maintain a proper bond includes the payments required under the Remining Financial Guarantee program. This amendment will allow the enforcement of the payment requirement using consistent procedures.

Section 86.281, Financial Guarantees To Insure Reclamation—General

Section 86.281(c) is amended to provide that the Department will designate a specified amount in the financial guarantees special account as financial assurance for the reclamation obligation of a permit with an approved remining area, rather than reserving a portion of those funds. This change is necessary in light of the conversion to a conventional bonding program. Under conventional bonding, the total reclamation cost is accounted for when determining the bond amount, thus enabling the Department to calculate more precisely the amount of funds that may need to be used to reclaim an approved remining area covered by a remining financial guarantee.

Section 86.281(e) is amended in conjunction with the revision in Section 86.281(c) and to clarify that all of the bonds forfeited (including the Remining Financial Guarantee) on a permit are to be used for reclamation of the mine site (including the remining area). It also is amended to allow, rather than require, the use of additional funds from the Remining Financial Assurance Fund if they are needed to complete the reclamation of the mine site. This change is based primarily on the concept that under conventional bonding, the bond amount posted is the amount required to complete the reclamation. In addition, it provides the Department with flexibility to use money from the Remining Financial Assurance Fund to pay for the necessary reclamation.

Section 86.282, Participation Requirements

Section 86.282(a)(2) is being revised to delete the option of using the ability to obtain a letter of credit as a demonstration of financial responsibility. Experience in implementing the Remining Financial Guarantee program has shown that the ability to obtain a letter of credit from a bank is not a good test of financial responsibility.

Section 86.283, Procedures

Section 86.283(a)(1) is amended to change the way the amount of the payment is determined as a result of the change to conventional bonding. The deleted language is based on the per-acre bond rate system. The proposed wording is based on the amount of the Remining Financial Guarantee.

Section 86.283(d) is amended to clarify how financial guarantee funds are allocated.

Section 86.283(e) is amended to delete language relating to the process of

"bond rollover" that was allowed under the Alternative Bonding System (ABS). The concept of "bond rollover" is not pertinent to conventional bonding.

Section 86.283(f) is being added to reduce the potential risk of insolvency of the Remining Financial Assurance Fund by requiring the replacement of a Remining Financial Guarantee in the event a pollutional discharge occurs at a mine site bonded with a Remining Financial Guarantee.

Section 86.284, Forfeiture

Sections 86.284(a) and (c) are amended to be consistent with the changes made in Sections 86.281(c) and (e).

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Pennsylvania program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time August 19, 2010. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 28, 2010.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2010–19017 Filed 8–3–10; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0503; FRL–9183–5]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NOx) emissions from natural gas-fired, fan-type central furnaces and other miscellaneous NOx sources. We are proposing to approve the local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 3, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0503, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov.,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected

should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: Rule 1111, Reduction of NOx Emissions from Natural Gas-Fired, Fan-Type Central Furnaces, and Rule 1147, NOx Reductions from Miscellaneous Sources. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of these rules and if that provision may be severed from the remainder of the rules, we may adopt as final those provisions of the rules that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 7, 2010.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 2010–19056 Filed 8–3–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2010–0504–201029; FRL–9185–1]

Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), and the State of South Carolina, through the South Carolina Department of Environmental Control (SC DHEC), submitted letters with a request for EPA to grant a one-year extension of the attainment date for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina Area (hereafter referred to as the "bi-state Charlotte Area"), on April 28, 2010, and May 6, 2010, respectively. The bi-state Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (Davidson and Coddle Creek Townships), North Carolina; and a portion of York County, South Carolina. In today's action, EPA is proposing to determine that the states of North Carolina and South Carolina have met the Clean Air Act (CAA or the Act) requirements to obtain a one-year extension to their attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. As a result, EPA is proposing to approve a one-year extension of the 1997 8-hour ozone moderate attainment date for the bi-state Charlotte Area. Specifically, EPA is proposing to extend the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011.

DATES: Comments must be received on or before September 3, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0504 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* "EPA–R04–OAR–2010–0504" Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–0504–201029." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Today's Action
III. EPA's Analysis of the States' Requests for an Attainment Date Extension for the Bi-State Charlotte Area for the 1997 8-Hour Ozone NAAQS
IV. Proposed Actions
V. Statutory and Executive Order Reviews

I. Background

A. 1997 8-Hour Ozone NAAQS

Ground level ozone is not directly emitted by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS. On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.,* 0.084 ppm when rounding is considered) (69 FR 23857, April 30, 2004). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The bi-state Charlotte Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004) using 2001–2003 ambient air quality data (69 FR 23857, April 30, 2004). At the time of designation the bi-state Charlotte Area was classified as a moderate nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date 6 years after the June 15, 2004, effective date for areas classified as moderate areas for the 1997 8-hour ozone nonattainment designations. Therefore the bi-state Charlotte Area's original attainment date was June 15, 2010. (*See* 69 FR 23951, April 30, 2004.) Under certain circumstances, the CAA allows for extensions of the attainment dates prescribed at the time of the original nonattainment designation. *See* below for further discussion.

As a point of clarification EPA issued a revised 8-hour ozone NAAQS in 2008. EPA subsequently reconsidered the 2008 NAAQS, and proposed a new 8-hour ozone NAAQS in January 2010. Final 8-hour ozone NAAQS are expected to be effective in August 2010. The current proposed action, however, is being taken with regard to the 1997 8-hour ozone NAAQS. Requirements for the bi-state Charlotte Area for the 2010 8-hour ozone NAAQS will be addressed in the future.

B. CAA Requirements for One-Year Extension Requests

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether an ozone nonattainment area attained the NAAQS. CAA Section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified to the next classification. However, CAA Section 181(a)(5) provides an exemption from these reclassification requirements. Under this provision, EPA may grant up to 2 one-year extensions of the attainment date under specified conditions. Specifically, Section 181(a)(5) states:

"Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the 'Extension Year') the date specified in table 1 of paragraph (1) of this subsection if—

(A) The State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) No more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the 'Extension Year.'

With regard to the first element, "applicable implementation plan" is defined in Section 302(q) of the CAA as the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

The language in section 181(a)(5)(B) reflects the form of the 1-hour ozone NAAQS, which is exceedance based and does not reflect the 1997 8-hour ozone NAAQS, which is concentration based. Because section 181(a)(5)(B) does not reflect the form of the 8-hour NAAQS and application would produce an absurd result, EPA interprets this provision in a manner consistent with Congressional intent but reflecting the form of the 1997 8-hour NAAQS. Therefore, EPA adopted an interpretation that under both sections 172(a)(2)(C) and 181(a)(5), an area will be eligible for the first of the one-year extensions under the 8-hour NAAQS if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less. The area will be eligible for the second extension if the area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less. No more than 2 one-year extensions may be issued for a single nonattainment area.

EPA interprets the CAA and implementing regulations to allow the

granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less, if a second one-year extension is requested).

II. Today's Actions

EPA is proposing to determine that North Carolina and South Carolina have met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. As a result, EPA is proposing to extend the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS. EPA's proposed actions are based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for 2009, and on EPA's preliminary determination that the States are meeting their federally-approved implementation plans. If today's proposed actions are finalized, the bi-state Charlotte Area's attainment date for the 1997 8-hour ozone NAAQS will be extended one-year from June 15, 2010, to June 15, 2011.

III. EPA's Analysis of the State's Requests for an Attainment Date Extension for the Bi-State Charlotte Area for the 1997 8-Hour Ozone NAAQS

As mentioned above in this rulemaking, EPA interprets the CAA and implementing regulations to allow the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less, if a second one-year extension is requested). Below provides EPA's analysis of how North Carolina and South Carolina have met these minimum requirements.

(1) The State(s) request(s) a one-year extension.

The State of North Carolina, through NC DENR, and the State of South Carolina, through SC DHEC, submitted letters on April 28, 2010, and May 6, 2010, respectively, requesting that EPA grant a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. Both letters contained certifications that each state is complying with all requirements and commitments pertaining to the bi-state Charlotte Area in the applicable implementation plan; and that the bi-state Charlotte Area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (i.e., 2009) for this initial request for an extension. EPA's analysis of the certifications from North Carolina and South Carolina, and of the ambient air quality monitoring data for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS (i.e., in relation to the States' attainment date extension request) is provided below.

(2) All requirements and commitments in the EPA-approved SIP for the area have been complied with.

In the letters submitted by NC DENR and SC DHEC, on April 28, 2010, and May 6, 2010, respectively, both states discuss implementation of state measures in the SIP. One of the required elements for a one-year extension required under Section 181(a)(5) of the CAA is that the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan. EPA has conducted an independent review of whether both North Carolina and South Carolina are in compliance with the applicable implementation plans for the bi-state Charlotte Area as intended by Section 181(a)(5)(A) of the CAA, and has made the preliminary determination that both states are in compliance. This preliminary determination is based on EPA's belief that both states are currently meeting the EPA-approved implementation plans for the bi-state Charlotte Area.

While both states previously had outstanding requirements related to the 1997 8-hour ozone attainment demonstrations for the bi-state Charlotte Area, both states have provided the necessary SIP submittals. Nonetheless, EPA does not and did not view submission or approval of these attainment demonstrations as relevant for meeting the "applicable implementation plans" for the bi-state Charlotte Area with regard to Section 181(a)(5)(A) of the CAA. However, EPA does note that on May 27, 2010,[1] letters were sent to the Governors of North Carolina and South Carolina acknowledging submission of the attainment demonstrations for the bi-state Charlotte Area. EPA's May 27, 2010, letters also announced EPA's determination that the attainment demonstration submissions provided by North Carolina and South Carolina were complete pursuant to Section 110(k)(1) of the CAA and the "Criteria for Determining the Completeness of Plan Submissions," as described in 40 CFR Part 51, Appendix V, and thus EPA stopped the sanctions clocks that were running for the States' previous failure to provide these required submissions. EPA is currently reviewing the approvability of these attainment demonstration submissions and will make its final determination on approvability through a separate rulemaking in the **Federal Register**.

(3) The area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year.

In the letters submitted by NC DENR and SC DHEC, on April 28, 2010, and May 6, 2010, respectively, both states have certified that the 4th highest daily 8-hour average ozone concentration for the bi-state Charlotte Area in 2009 was below 0.084 ppm, and that the 2009 ozone data which are included in EPA's Air Quality System (AQS) meets necessary quality control and quality assurance requirements. Table 1 provides the 2009 4th highest concentrations at the monitors in the bi-state Charlotte Area.

[1] In EPA's May 27, 2010, letters to the Governors of North Carolina and South Carolina regarding the stoppage of the sanctions clocks for the finding of failure to submit for the bi-state Charlotte attainment demonstration for the 1997 8-hour ozone NAAQS, EPA inadvertently indicated the dates of the North Carolina attainment demonstration submissions were November 12, 2008, and April 5, 2009; and the dates of the South Carolina attainment demonstration submissions were November 13, 2008, and April 29, 2009. EPA has since sent a follow up letter correcting the dates of the submission for North Carolina as November 12, 2009, and April 5, 2010; and for South Carolina as November 13, 2009, and April 29, 2010.

TABLE 1—2009 4TH HIGHEST CONCENTRATIONS FOR THE BI-STATE CHARLOTTE AREA

Monitoring Site [2]	County	2009 4th Highest Concentration (ppm)
Arrowood	Mecklenburg, County, NC	0.068
County Line	Mecklenburg County, NC	0.071
Crouse	Lincoln County, NC	0.065
Enochville	Rowan County, NC	0.073
Garinger (Plaza)	Mecklenburg County, NC	0.069
Monroe	Union County, NC	0.067
Rockwell	Rowan County, NC	0.071

EPAhas reviewed the 1997 8-hour ozone NAAQS ambient air quality monitoring data for the bi-state Charlotte Area, consistent with the requirements contained in 40 CFR part 50 and as recorded in the EPA AQS database. On the basis of that review, EPA has preliminarily concluded that for the attainment year, 2009, the bi-state Charlotte Area's 4th highest daily 8-hour average concentration was 0.073 ppm which is below the 8-hour ozone standard of 0.08 ppm (effectively 0.084 ppm).

Because the statutory provisions have been satisfied, EPA is proposing approval of North Carolina and South Carolina's attainment date extension requests for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS.

IV. Proposed Actions

EPA is proposing to approve North Carolina's April 28, 2010, and South Carolina's May 6, 2010, requests for EPA to grant a one-year extension (from June 15, 2010, to June 15, 2011) of the bi-state Charlotte Area attainment date for the 1997 8-hour ozone NAAQS because EPA believes that both North Carolina and South Carolina have met the statutory requirements for such an extension. EPA's belief is based on its preliminary determination that both states are in compliance of the requirements and commitments associated with the EPA-approved implementation plans, and on the belief that the 4th highest daily 8-hour ozone average concentration for 2009 for the bi-state Charlotte Area is below the 1997 8-hour ozone NAAQS as required by the CAA. As provided in 40 CFR 51.907, if EPA finalizes this action, it will extend, by one year, the deadline by which the bi-state Charlotte Area must attain the 1997 8-hour ozone NAAQS. It will also extend the timeframe by which EPA must make an attainment determination for the area. EPA notes that this proposed action only relates to the initial one- year extension. As noted in Section 181(a)(5) of the CAA, areas may qualify for up to 2 one-year extensions. If requested at a future date, EPA will make a determination of the appropriateness of a second one-year extension for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS in a separate rulemaking.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP submissions and requests that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing states' requests for an extension of the 1997 8-hour ozone NAAQS attainment date for the bi-state Charlotte Area, EPA's role is to approve the state's request, provided that it meets the criteria of the CAA. Accordingly, this proposed action merely approves a state request for an extension of the 1997 8-hour ozone NAAQS attainment date as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 23, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–19141 Filed 8–3–10; 8:45 am]

BILLING CODE 6560–50–P

[2] While York County, South Carolina does have an ozone monitor, this monitor is not included in the portion of the bi-state Charlotte Area that is currently designated nonattainment for ozone and thus is not relevant for consideration of the attainment date extension requests. However, the 4th maximum highest concentration in 2009 for the York County, South Carolina ozone monitor is 0.62 ppm—well below 0.084 ppm.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 10–152; FCC 10–133]

Satellite Television Extension and Localism Act of 2010 and Satellite Home Viewer Extension and Reauthorization Act of 2004

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission proposes to implement provisions of the "Satellite Television Extension and Localism Act of 2010"(STELA) that require the Commission, within 270 days after the date of its February 27, 2010 enactment, to "develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of an antenna, to receive signals in accordance with the signal intensity standard in Section 73.622(e)(1) of [our rules], or a successor regulation, including to account for the continuing operation of translator stations and low power television stations," and to issue an order completing its rulemaking to establish a procedure for on-site measurement of digital television signals in ET Docket No. 06–94. The Commission previously sought comment on a variety of issues related to establishment of a procedure for on-location measurements pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), but has not yet adopted final rules specifying such a procedure.

DATES: Comments must be filed on or before August 24, 2010, and reply comments must be filed on or before September 3, 2010.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, e-mail: *Alan.Stillwell@fcc.gov,* TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 10–152, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *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** of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket No. 10–152, FCC 10–33, adopted July 28, 2010, and released July 28, 2010. 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: *http://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: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail 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. The Satellite Television Extension and Localism Act of 2010 (STELA) reauthorizes the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) by extending the effectiveness and amending certain provisions in the Communications Act and the Copyright Act. These provisions govern the delivery of distant network-affiliated broadcast television station signals by satellite providers. To implement the new statutory regime, the STELA, *inter alia,* requires the Commission, within 270 days after the date of its February 27, 2010 enactment, to (1) "develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of an antenna, to receive signals in accordance with the signal intensity standard in § 73.622(e)(1) of [the Commission's rules], or a successor regulation, including to account for the continuing operation of translator stations and low power television stations," and (2) issue an order completing its rulemaking to establish a procedure for on-site measurement of digital television signals in ET Docket No. 06–94.

2. In the Notice of Proposed Rulemaking (NPRM) portion of this action, the Commission proposes to prescribe a point-to-point predictive model for determining the ability of individual locations to receive an over-the-air digital television broadcast signal at the intensity level needed for service

through the use of an antenna, as required by the STELA. Our goal in proposing this model is to provide a means for reliably and presumptively determining whether the over-the-air signals of television stations, including low power stations, can be received at individual locations for purposes of establishing the eligibility of individual households to receive the signals of distant television broadcast network stations from their satellite carriers. The Commission believes that the proposed predictive model, which is based on the current model for predicting the intensity of analog television signals at individual locations, will allow such determinations to be made in a timely and cost effective manner for all parties involved, including network TV stations, satellite carriers and satellite subscribers.

3. In the Further Notice of Proposed Rulemaking (FNPRM), the Commission seeks information to update the record in ET Docket No. 06–94, based on which it intends to prescribe rules for determining eligibility of satellite subscribers for receiving distant network signals from their satellite TV provider using on-location testing/measurements. The Commission previously sought comment on a variety of issues related to establishment of a procedure for on-location measurements pursuant to the SHVERA, but has not yet adopted final rules specifying such a procedure. In the STELA, Congress modified some of the testing requirements set forth in the SHVERA. The Commission is now addressing these modifications to both refresh the record and obtain additional information and comment on STELA requirements that differ from the SHVERA requirements.

Predictive Model—Notice of Proposed Rulemaking

4. As recognized and directed by Congress in the STELA, a predictive model is needed to provide presumptive determinations as to whether a household is unserved by local network-affiliated digital full service and digital low power TV and digital TV translator stations. The STELA revises the definition of "unserved household" in three potentially significant ways: (1) The network stations whose signals are to be considered are now limited to those network affiliates in the same DMA as the subscriber; (2) the definition of "unserved household" now references an "antenna" without specifying what kind of antenna or where it is located; and (3) the definition specifically recognizes both a "primary stream" and a "multicast stream" affiliated with a network. The Commission believes the existing model for predicting the availability of analog TV signals, known as the Satellite Home Viewing Improvement Act Individual Location Longley-Rice model (SHVIA ILLR model), can be readily modified to predict digital TV signal strengths at individual locations under the new STELA regime and thereby provide presumptive determinations of eligibility for delivery of distant digital signals by satellite carriers in the same manner as it currently provides for analog signals. Use of this model with appropriate modifications for digital signals would also comply with the intent of Congress in the STELA that we rely on the ILLR model as previously revised for analog signals and the Commission's recommendation in its *2005 Report to Congress* for use in making determinations of eligibility for satellite delivery of distant network signals. The SHVIA ILLR model has proven over time to be an accurate and reliable predictor of analog TV signal strength and has been well accepted by both the broadcast and DBS industries. Through use of this model, consumers, broadcast television stations and satellite television carriers have avoided the need to conduct an actual measurement test every time a satellite customer believes that he or she is unable to receive an adequate signal off-the-air from a local television network-affiliated station. The Commission expects the revised model to provide these same benefits in the digital television environment. The Commission will discuss its proposal for the digital signal predictive model in the following paragraphs.

5. The Commission notes that, with the anticipated launch of local-into-local service in all 210 DMAs by Dish Network, the circumstances in which a subscriber would need, or be eligible for, distant signals will be significantly reduced. It therefore anticipates that the predictive model will be used far less frequently than in previous years.

6. *Digital TV ILLR Model Proposal.* The Commission proposes to modify the SHVIA ILLR model to make it capable of reliably and accurately predicting the field strength of digital television stations and to establish the modified version in its rules as the point-to-point model for determining the ability of individual locations to receive with an antenna the digital television signals of full service television stations, digital low power television stations (including digital Class A stations), and digital TV translator stations. Specifically, the Commission proposes to adopt the Individual Location Longley-Rice model set forth in CS Docket No. 98–201 as revised for analog signals in the SHVIA proceeding, *i.e.,* the SHVIA ILLR model, with appropriate modifications, as the method for prediction of digital television signal strengths. Consistent with the STELA, the Commission is also proposing to use the DTV noise-limited service contour values in § 73.622(e)(1) as the standard for determining whether a predicted field strength is sufficient for reception of a signal at an individual location. This "digital TV ILLR model" and standard will be specified as the required method for making presumptive determinations of an individual household's eligibility for satellite retransmission of the distant network signals. The Commission requests comment on the proposals for a digital TV ILLR model as set forth herein.

7. The prediction model proposed addresses the statutory change in the definition of an unserved household from an "outdoor antenna" to an "antenna" and takes into account terrain, morphology (buildings and similar man-made land uses), and other land cover variations, some of which were recognized in our development of the SHVIA ILLR model but still are yet to be evaluated and accepted by the scientific and technical community. Inasmuch as the digital signals of digital low power TV (including digital Class A) and digital TV translator stations use the same transmission standard as full service stations, the Commission believes that the same model will be capable of serving to provide predictions of the signal strengths of all types of digital TV stations. That is, the Commission tentatively concludes that the same digital TV model will provide predictions that are equally reliable and accurate for full service, low power and TV translator digital signals. The Commission therefore proposes to use the new digital TV ILLR model for prediction of the signal strengths of all three of these types of digital TV stations. It also believes that this model will account for multicast as well as primary streams that are transmitted by a station and affiliated with one or more networks. The Commission requests comment on this proposal and its tentative conclusion. The Commission also proposes to establish a procedure through which parameters used in the digital TV ILLR model can be adjusted based on new information that may become available and other refinements. This process will provide for continued refinement of the model on the basis of reliable technical information, as it becomes available.

8. The analog SHVIA ILLR model that will serve as the basis for our digital TV ILLR model is similar to the service coverage predictive model that the Commission established for evaluating television coverage and interference prediction, as set forth in its Office of Engineering and Technology's (OET) OET Bulletin No. 69. However, whereas the Longley-Rice model for coverage and interference prediction provides estimates of aggregate service availability (including losses due to interference), the SHVIA ILLR model provides estimates only of field strength at individual locations (and it does not include consideration of interference). The SHVIA ILLR model does not replace the current Commission rules for field strength contours in § 73.683 or for prediction of coverage for non-satellite distant signal eligibility purposes in § 73.684. In fact, the SHVIA ILLR model could identify unserved households lying within a station's former Grade B contour and, likewise, identify served households outside that contour.

9. The SHVIA ILLR model incorporates features to account for the radio propagation environment and the receiving system conventionally assumed to be used by viewers to achieve service with an antenna. Given that digital and analog television signals are transmitted in the same frequency bands, the factors affecting propagation of signals using the two different modulation methods and the background noise level are the same. The Commission does not believe that it needs to modify any of the features of the SHVIA ILLR model that describe propagation and the background noise levels and is not proposing to modify those elements of the model. The Commission also observed that the "planning factors" that describe a set of assumptions for the television reception system are different in some important respects for analog and digital signals. However, with the exception of antenna location and performance and certain other factors relating to propagation that are discussed in the following paragraphs, the Commission does not believe that it needs to consider those differences for purposes of the proposed digital TV ILLR model because they are incorporated into the threshold signal level for reception for service, which the STELA directs to be set at the noise-limited levels specified in § 73.622(e)(1).

10. The Commission also does not see any need for changing the model to reflect the added reference to network affiliated multicast streams. The prediction for a television broadcast signal applies regardless of the content. If a household is predicted to receive a station, then all of that station's broadcast streams would be received. Therefore, the Commission proposes to make no special adjustment in the model to implement this change in the definition of unserved households. The Commission requests comment on these aspects of the proposed digital TV ILLR model.

11. The aspects of the SHVIA ILLR model that are different for digital and analog signals and that the Commission needs to modify or consider modifying in the new point-to-point predictive model for digital signals include antenna location (outdoor vs. indoor) and performance, time and location variability factors, and land use and land cover. The Commission discusses its proposals for changes to the SHVIA ILLR model to address these aspects of the new digital TV ILLR model for prediction of DTV signal strengths and its proposal for a procedure for the continued refinement of the model as new information may become available in the following sections. The proposed amendments to the Commission's rules to implement the new digital TV ILLR model are set forth in Appendix A in the NPRM, and the proposed digital TV ILLR model will be described in a new OET Bulletin No. 73, a draft of which is attached as Appendix B in the NPRM and NOI.

12. The Commission proposes to uphold any previous findings of eligibility for delivery of distant signals based on the digital TV ILLR predictive model, in the event that it updates that model at some point in the future and a prediction from the updated model indicates that the location can receive service from a local network station. The Commission believes that "grandfathering" the eligibility of households in such cases would be appropriate to avoid disruption of the existing services to which households have been accustomed.

13. *Antenna Location and Performance.* The Commission believes that the current standard for an outdoor antenna as specified in the DTV planning factors in OET Bulletin No. 69 should be used in predicting digital television signal strengths at individual locations. As indicated above, the STELA revises the definition of an unserved household by changing the reference to the antenna used to receive service from a "conventional, stationary outdoor rooftop antenna" to an "antenna." The reception model (planning factors) for digital television service assumes that a viewer uses an outdoor antenna with a certain level of gain mounted at 10 meters (33 feet) above ground (roof-top level). Those antenna location and performance parameters are reflected in the field strength values defining the analog Grade B and digital noise-limited contours in §§ 73.683(a) and 73.622(e)(1), respectively. The STELA mandates use of the digital television signal strength standard in § 73.622(e)(1) or a successor regulation. Thus, we believe that STELA's specification of the signal strength intensity standard incorporated into our rules implies use of an outdoor antenna to receive service.

14. However, the Commission believes that Congress's use of the term "antenna" in the STELA grants the Commission greater flexibility to take into account different types of antennas than was previously available. In addition, Congress and representatives of the direct broadcast satellite industry have previously raised concerns as to whether the Commission should consider certain issues relating to the location and performance of actual antennas consumers use to receive DTV signals. In the SHVERA, Congress directed the Commission to investigate whether the noise-limited DTV service standard should be revised to take into account the types of antennas that are available to consumers. The Commission concluded in the *2005 Report to Congress* that the existing DTV planning factor assumptions for antenna gain, orientation, and placement were appropriate and should not be altered. It also specifically concluded that the digital television signal strength standards in the Commission's rules should not be modified to account for the fact that an antenna can be mounted on a roof or placed within a home and can be fixed or capable of rotating. In this regard, it concluded that it would be impractical to attempt to account for indoor reception conditions in the DTV planning factors and also stated that it would be impracticable to establish a regime whereby households with indoor antennas are subject to different signal strength standards than those with outdoor antennas. It noted that difficulty would arise in setting and applying standards for situations in which a household could not use an outdoor antenna.

15. In view of the Commission's findings in the *2005 Report to Congress* and the relevance of those findings to the digital signal intensity standard that Congress specified in the STELA, the Commission believes that the current standard for an outdoor antenna as specified in the DTV planning factors should be used in predicting digital television signal strengths at individual locations. The Commission therefore

proposes to include that outdoor antenna standard (with some adjustments for height consistent with the analog ILLR model) in the new digital TV ILLR model that will be used in making distant signal eligibility determinations under the STELA. The Commission also believes that it would be appropriate to use the receive antenna gain and front-to-back ratios specified in the planning factors for the performance capabilities of the outdoor receive antenna used in making predictions, as those values are consistent with the DTV noise-limited service contour standard in § 73.622(e)(1) and outdoor antennas performing at (or better) than those values are readily available. The Commission requests comment on these proposals, including whether it should adopt gain and front-to-back specifications for the receive antenna that are different from those set forth in the planning factors.

16. Using the outdoor model may result in instances where a consumer who either cannot use an outdoor antenna or cannot receive or cannot receive service using an outdoor antenna and is not able to receive a station's service with an indoor antenna will be found ineligible for satellite delivery of a distant network signal. The Commission remains concerned about such instances, and therefore is again inviting comment and suggestions and new information that would provide a solution for those satellite television subscribers who either are not able to use an outdoor antenna or cannot receive service using an outdoor antenna and cannot receive service with an indoor antenna. In this regard, the Commission is particularly interested in new ideas and information that have been developed in the time since the *2005 Report to Congress.* For commenters who advocate including an indoor antenna in the model, the Commission requests detailed technical information regarding the specific standards to be used for all aspects of the transmission path including antenna characteristics, building penetration loss, multipath effects, etc. In addition, such commenters should provide detailed information regarding how those parameters should be applied within a standard model given the variety of situations that could arise, and how to develop a model that would also be valid for consumers with outdoor antennas. The Commission seeks comment on how to develop a model that could vary depending on whether the subscriber lives in a multiple dwelling unit or a single family home, or whether the household is in an urban area or in a rural area. Further, the Commission seeks comment on how to ensure that such a flexible model would not be abused by specification of incorrect parameters describing the location for which a prediction is to be made.

17. *Time and Location Variability Factors.* Consistent with its findings in the *2005 Report to Congress,* the Commission proposes to modify the time variability factor of the SHVIA ILLR model to 90% as used in the DTV planning factors and to continue to use 50% as the location variability in the digital TV ILLR model. The Commission requests comment on these proposals. Parties commenting on this issue who believe that alternative specifications for the time and location variability factors should be used are requested to provide new information, data and analyses that were not available at the time of the Inquiry to support their positions.

18. The field strength of television signals, like that of other radiofrequency signals, varies with time and location. That is, television signal strengths vary over time at the same location and also vary from location to location, often very short distances apart, when observed at the same time. These variations of field strength with time and location are incorporated into the television planning models. For analog TV, the SHVIA ILLR model defines service using the F(50,50) field strength curves in § 73.699 of the Commission's rules. The Commission notes that DTV service differs in that it is based on use of F(50,90) field strength curves, as derived from the F(50,50) and F(50,10) field strength curves in § 73.699 of our rules, to define a DTV station's noise-limited contour. The F(50,90) service contour means at least 50% of the locations can be expected to receive a signal that exceeds the field strength value at least 90% of the time. The Commission also notes that the field strength standard for analog reception (the Grade B contour value) incorporates an adjustment to raise the F(50,50) values to F(50,90).

19. In the Inquiry that provided information used in the *2005 Report to Congress,* the Commission did not find EchoStar's and H&E's position on changing the time variability factor values for DTV persuasive. In this regard, it noted that radiofrequency signal propagation is always statistical in nature and that the power and/or antenna height needed to approach 100% reliability increases in a non-linear manner. The Commission also observed that the current values were established based on an industry-Government consensus that relied on the traditional TV service model that worked well for analog TV service and that, as argued by the broadcasters, changing the time variability factor values to 99% reliability would greatly shrink local DTV service areas. It further observed, as pointed out by Meintel, Sgrignoli and Wallace, consulting engineers, that the assumed 10% reduction in service availability occurs at the outermost limit of a station's service area and is not the typical figure for time reliability across a station's entire service area. As the distance to a station's transmitter decreases, time availability increases. The Commission stated that households at the edge of a station's service area could also improve their reception (and thereby reduce or eliminate periods when the station's signal is not available) by mounting their antennas higher, using higher gain antennas, or using low-noise pre-amplifiers at their antennas. No commenter suggested changing the location variability factor and the Commission stated that it knew of no considerations that would lead it to recommend changing from the current median value for this factor. The Commission seeks comment on whether there should be any changes to this factor in the context of digital signals, which are subject to the so-called cliff effect that results in full loss of service if the signal falls below a small amount below the service threshold.

20. *Land Use and Land Cover Factors.* The land use and land cover ("LULC") data provides information on building structures and other man-made terrestrial features and on other land cover variations such as forests and open land that can affect radio propagation. Inclusion of this data in the prediction methodology of the SHVIA ILLR TV computer model significantly enhanced the accuracy and reliability of its signal strength predictions. The method for considering these land cover factors is to assign certain signal loss values, in addition to those already implicit in the model, as a function of the LULC category of the reception point. More specifically, the field strength predicted by the basic Longley-Rice model is reduced by the clutter loss value associated with the respective LULC category for the location. Reception point environments at individual locations are classified in terms of the codes used in the LULC database of the United States Geological Survey (USGS).

21. The Commission proposes to continue to apply the LULC categories and clutter loss values for describing land use and land cover features in the

digital TV ILLR model in the same manner as currently incorporated into the SHVIA ILLR model. These values were specified in the *SHVIA First Report and Order.* We recognize that these parameters were the subject of differing views in the inquiry we conducted in preparing the *2005 Report to Congress.* Therein, it was concluded that the clutter loss values used in the current SHVIA ILLR model strike the correct balance, noting that this has been borne out by the data on the model's performance, which shows that using the values adopted by the Commission for the SHVIA ILLR model produce approximately an equal number of over-predictions as under-predictions. Thus, we have found a range of values, including zero, that correspond to different land cover types are valid. We also observe that the Commission further indicated that it believed that for any digital model that may be developed, the values currently in use for the analog model would similarly yield accurate results. The Commission requests comment on the appropriate clutter loss values for predicting digital television field strengths. It is particularly interested in new information and data that may have been developed since 2005. In this regard, the Commission also requests comment and information regarding any of the additional LULC categories and data that, at the time of our development of the SHVIA ILLR model, were yet to be evaluated and accepted by the scientific and technical community and have since become accepted by that community.

22. *Analog Low Power TV and TV Translator Stations.* With respect to the continued operation of analog Low-Power Television (LPTV), Class A, and TV Translator stations that retransmit in analog format the content of local digital network-affiliated television stations, the Commission tentatively concludes that the existing predictive methods specified in FCC OET Bulletin No. 72 should continue to apply. The STELA requires the Commission "* * * to account for the continuing operation of translator stations and low power television stations." Although all full-service television stations were converted fully to digital operation by June 12, 2009, LPTV, Class A, and TV Translator stations were not required to convert and most of those stations continue to broadcast in analog format. For those stations, the Commission believes that there is no reason to change the SHVIA ILLR model that has been in use for several years, and so proposes to continue to specify the procedure described in OET–72 for determining the eligibility of viewers with respect to those analog stations.

23. *Procedure for Continued Refinement of the Digital TV ILLR Model.* As indicated, the STELA requires that the Commission establish procedures for continued refinement in the application of the digital TV ILLR model through use of additional data as it becomes available. The Commission believes the most efficient, effective, fair, transparent and timely approach for revising the digital TV ILLR model if new information becomes available is to hold open the docket in this proceeding and conduct further rule making to consider possible changes to OET Bulletin No. 73 (which will describe the model and be referenced in our rules) to implement improvements to the model. This proposal is consistent with the Commission's past action concerning the SHVIA model. Given that the digital TV ILLR model will be incorporated into its rules, the Commission believes that this proposal also is consistent with the requirements of Section 553 of the Administrative Procedures Act. Under this proposal, parties with new data, analysis or other information relating to improving the predictive model could submit requests to modify the model under the instant docket. OET would evaluate such requests and prepare a Notice of Proposed Rulemaking for consideration by the Commission. The Commission also could initiate rulemaking action on its own motion. The Commission invites comment on this proposal to use its standard notice and comment rulemaking procedure for updating the digital TV ILLR model and its applications and also asks for suggestions for modifications and alternative plans.

24. Stations to Consider for Distant Signals. The Commission does not propose to modify the proposed digital TV ILLR model to address the STELA provision that a subscriber is eligible for delivery of distant network signals only if he or she is unserved by stations located in the same DMA. Under the SHVIA and the SHVERA, the predicted signal strengths of all the stations affiliated with the same network were considered, regardless of those stations' DMAs. That is, if a satellite subscriber wanted to receive the distant signal of the XYZ network, then the predicted results from any XYZ network affiliated stations would be analyzed for that subscriber's location and if one or more of those affiliated stations were predicted to deliver a signal of the requisite intensity, the subscriber would be predicted "served" by that network and not eligible for a distant signal from that network unless each of the stations predicted to serve the subscriber granted a waiver. The STELA changes this regime by specifying that only "local" stations are to be considered, *i.e.,* stations that are located in the same DMA as the satellite subscriber instead of examining any station of the same network regardless of DMA.

25. Rather than modify the proposed digital TV ILLR model itself to address this change, the Commission proposes to change the way the model's results are to be used. That is, instead of considering any network station that the model predicts to be available in the determination of a subscriber's eligibility for a distant signal, we propose to require satellite carriers to consider only the signals of network stations located in the subscriber's DMA. The Commission seeks comment on this proposal. It notes that this statutory change to consideration of only local network affiliated stations will reduce the number of stations that need to be considered when determining eligibility for distant network signals and thereby also reduce the burden associated with waiver requests by reducing the number of stations from which a waiver would have to be requested. As noted, this statutory change will also reduce the testing burden. The Commission also seeks comment on any other methodological or other changes it should consider to minimize consumer burdens.

On-Site Signal Measurement—Further Notice of Proposed Rulemaking

26. The STELA, similar to the SHVERA, provides that if the ILLR model predicts that a satellite subscriber receives a local network station of sufficient field strength, the subscriber may request an on-site signal strength test to determine definitively whether a local signal can be received at his/her location at the specified signal intensity and directs the Commission to complete its rulemaking proceeding in ET Docket No. 06–94 on establishment of a measurement procedure. The measurement procedure is to be used to determine whether the signal of a network-affiliated station is of sufficient intensity (field strength) to be received at the subscriber's location, *i.e.*, meets or exceeds the standard in § 73.622(e)(1) of the Commission's rules. Essentially, the measurement procedure provides an option for obtaining an empirical, rather than predictive, determination of the signal strength available at a location. The results of measurements would be considered more accurate than the results of the predictive model in all

cases. Because the measurement procedure and predictive model are both intended to determine the same issue, the underlying service model and planning factors on which each is based need to be consistent (and the Commission's proposals for the predictive model herein and for the measurement procedure in the *SHVERA NPRM* use the same service model/planning factors).

27. The STELA raises three issues regarding the measurement procedure not addressed in the *SHVERA NPRM:* (1) The stations whose signals are to be measured; (2) the antenna to use in performing on-location testing; and (3) the program stream from a station in the market to be measured. Generally, the commenting parties in ET Docket No, 06–94 agreed with our proposals to largely base the measurement procedures for digital television signals on those already in use for measuring analog signals with specific modifications to account for the differences between analog and digital television signals. The Commission seeks comment on any new developments or changed positions in order to update the record. To the extent that commenters' positions remain the same, they need not submit additional or repetitive comments reiterating information and positions that were previously filed.

28 . *Stations to be Tested.* As indicated, the STELA differs from the SHVIA and SHVERA in that it specifies that only "local" stations, *i.e.,* stations located within the same DMA as the subscriber's household, are to be considered in determining a subscriber's eligibility. This change similarly affects the measurement procedures. Previously, a testing entity had to measure the signals of all stations affiliated with a specific network. However, under the STELA, a testing entity is to consider only the signals of those network-affiliated stations that are located in the same DMA as the satellite subscriber. The Commission proposes to modify its proposed rules for measurement of DTV signals for purposes of determining eligibility for delivery of distant network signals by satellite providers to incorporate this change. The Commission seeks comment on this proposal. As noted, the statutory change could reduce burdens on both testers and consumers as fewer stations would need to be tested, which should result in lower costs for consumers and consume less time. Consistent with the STELA's direction that it seek ways to minimize consumer burdens associated with on-location testing, the Commission requests comment and suggestions regarding steps it could take to further minimize the burden of on-location testing on consumers.

29. *Indoor Measurements.* The Commission proposes to adopt the same approach with regard to measurement of digital television signal strengths as it proposed with regard to the digital TV ILLR model: to limit measurement to outdoor antennas. The discussion in the *SHVERA NPRM* only addressed outdoor signal measurements, as the SHVERA specified use of an outdoor antenna. In view of the discussed change in the STELA from the term "conventional, stationary, outdoor rooftop receiving antenna" to the term "antenna," we are revisiting the issue of the antenna to be used in testing. The principal alternative to a conventional, stationary outdoor antenna that is currently used by consumers is a moveable indoor antenna. As noted in the NPRM discussion, in the *2005 Report to Congress* the Commission concluded that many factors make it impractical to develop a simple, reliable and accurate model of indoor television reception. Those same factors, including the performance expected of an indoor antenna, the placement of the antenna, and the location within a structure or room where the antenna is located make it difficult to develop an indoor television signal measurement procedure. First, because of the variability of indoor reception conditions across different structures and in different rooms and locations within the same structure, there is no standard model and planning factors for indoor reception, and in particular there is no standard antenna specification for such reception. The wide variation in indoor viewing situations makes it difficult to specify a standard model that meaningfully relates to any typical indoor viewing location. In addition, the performance of indoor antennas available to consumers varies significantly. Second, signal strengths typically vary significantly at different locations within a room and so there is the question of where to place the antenna—should it be in the center of the room, next to a wall or a window, or at the location of the television? What if the consumer changes the location of the television in the future? Also, there are questions regarding antenna height. Should the testing antenna be placed one or two meters or some other distance above the floor?

30. In addition to the practical difficulties of specifying a standard model for indoor reception, as discussed, the signal intensity standard in § 73.622(e)(1) assumes an outdoor antenna. For these reasons, the Commission proposes not to specify a procedure for indoor measurement of DTV signal strengths. It is, however, requesting comments and suggestions for alternative approaches for making eligibility determinations for situations where consumers are not able to use an outdoor antenna to receive local television signals. Such approaches could include options for measurement of signals indoors. Commenters advocating development of a procedure for indoor measurement of DTV signals should provide detailed technical information on all aspects of such procedures, including a standard indoor antenna and specific measurement procedures that address the considerations indicated above. Such parties are also requested to specify proposals for indoor measurement that would be suitable for adoption into our rules.

31. *Multicast signals.* The Commission tentatively concludes not to adopt special testing procedures to measure network signals that are transmitted on multicast streams, rather than on a primary stream. The testing protocol measures a station's signal at the subscriber location. Whether the station's signal includes one or more program streams or networks, there is no change needed in the test employed because the presence of multiple streams has no bearing on the signal intensity or receivability. The Commission believes the tester, the satellite carrier and the network affiliate involved in the conduct of the test will be able to identify the network affiliates in the broadcast signal. If the signal is found to be available at the subscriber location at the requisite intensity, then any and all of the networks in that signal will likewise be available. If the station's signal is not found to be present at the requisite intensity, the subscriber will be unserved with respect to the networks broadcast on the streams in that signal, unless the subscriber receives a signal of sufficient strength from another local station affiliated with the same network or networks. The Commission seeks comment on this tentative conclusion.

Initial Regulatory Flexibility Certification

32. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that an initial regulatory flexibility analysis be prepared for notice and comment

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

rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." [2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] 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).[5]

33. In the NPRM, the Commission proposed to amend its rules to prescribe a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through use of an antenna, to receive signals in accordance with the signal intensity standard in § 73.622(e)(1) of the Commission's rules, 47 CFR 73.622(e)(1), or a successor regulation, including the ability to account for the continuing operation of low power television and TV translator stations.

34. Television station licensees, Direct Broadcast Satellite (DBS) operators, and other Direct to Home (DTH) Satellite operators may use the proposed technique to establish the eligibility or non-eligibility of individual households for satellite delivery of distant television programming. These determinations will usually be made at the point of sale of satellite receiving equipment for homes and will tend to increase the number of eligible customers. The changes proposed are of a technical, scientific nature, without a substantial economic impact. In addition, the primary economic impact of these proposals will be their indirect effect on individual consumers.

35. Therefore, we certify that the proposals in this Notice of Proposed Rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the Notice, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA.[6]

Further Initial Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[7] the Commission has prepared this present Further Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking. (FNPRM). Written public comments are requested on this Further IRFA. Comments must be identified as responses to the Further IRFA and must be filed by the deadlines specified on the first page of this NPRM and FNPRM. The Commission will send a copy of this NPRM and FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[8]

A. Need for and Objectives of the Proposed Rules. In the NPRM portion of this action, we seek comment on proposals for establishing a predictive model for determining the signal strength of digital television signals, including low power TV stations (Class A, LPTV and TV translator stations), at individual locations and for using that model to determine eligibility for delivery of distant network-affiliated television broadcast signals by direct broadcast satellite services. In addition, we seek comment on our proposal to continue to use the current standard for an outdoor antenna as specified in the DTV planning factors in predicting digital television signal strengths at individual. In the FNPRM discussion, we seek comment on two additional proposals relating to our proposed procedure for measurement of the strength of digital television signals at individual locations in ET Docket No 06–94. First, consistent with the new STELA provisions for eligibility, we propose to specify that a testing entity is to consider and test only the signals of those network affiliated stations that are located in the same DMA as the satellite subscriber. Second, we propose to specify the use of an outdoor antenna in measuring digital television signal strengths and, consistent with the change in the STELA to specifying an "antenna" rather than an "outdoor antenna," we also will consider comments and suggestions for solutions for situations where consumers are not able to use an outdoor antenna to receive local television signals. We indicate that such solutions could include options for measurement of signals indoors. This NPRM and FNPRM begins the process of implementing requirements of the Satellite Television Extension and Localism Act of 2010 (STELA).[9]

B. Legal Basis: The legal basis for the rule changes proposed in the NPRM and FNPRM is contained in Sections 1, 4(i) and (j), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 339 (including amendments enacted in the Satellite Television Extension and Localism Act of 2010).

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in this Notice may apply. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[10] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [11] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[12] 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).[13]

The proposed rules contained in the *Further NPRM* seek comment on and

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 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**."

[5] 15 U.S.C. 632.

[6] *See* 5 U.S.C. 605(b).

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

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

[9] *See* Satellite Television Extension and Localism Act of 2010, Title V of the "American Workers, State, and Business Relief Act of 2010," Public Law 111–175, 124 Stat. 1218 (2010) relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.

[10] 5 U.S.C. 603(b)(3), 604(a)(3).

[11] *Id.,* 601(6).

[12] 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 terms which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register.**"

[13] 15 U.S.C. 632.

modify previous proposals to measure the strength of digital television signals at any particular location, as a means of determining whether any particular household is "unserved" by a local DTV network station and is therefore eligible to receive a distant DTV network signal retransmitted by a Direct Broadcast Satellite (DBS) service provider. Therefore, DBS providers will be directly and primarily affected by the proposed rules, if adopted. In addition, the proposed rules, if adopted, will also directly affect those local digital television stations that broadcast network programming. Therefore, in this Further IRFA, we consider, and invite comment on, the impact of the proposed rules on small digital television broadcast stations, small DBS providers, and other small entities. A description of such small entities, as well as an estimate of the number of such small entities, is provided in the following paragraphs.

Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[14] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[15] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[16] 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."[17] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[18] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[19] Thus, we estimate that most governmental jurisdictions are small.

Cable Television Distribution Services. The "Cable and Other Program Distribution" census category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, the Commission relies on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with $13.5 million or less in annual receipts. Currently, only two operators—DirecTV and EchoStar Communications Corporation (EchoStar)—hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, the Commission acknowledges the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Television Broadcasting. The proposed rules and policies apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[20] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[21] The Commission has estimated the number of licensed commercial television stations to be 1,392.[22] According to Commission staff review of the BIA/Kelsey, MAPro Television Database ("BIA") as of April 7, 2010, about 1,015 of an estimated 1,380 commercial television stations[23] (or about 74 percent) have revenues of $14 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed non-commercial educational

[14] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (revised Sept. 2009).

[15] 5 U.S.C. 601(4).

[16] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[17] 5 U.S.C. 601(5).

[18] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[19] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[20] *See* 13 CFR 121.201, NAICS Code 515120.

[21] *Id.* This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[22] *See* News Release, "Broadcast Station Totals as of December 31, 2009," 2010 WL 676084 (FCC) (dated Feb. 26, 2010) ("*Broadcast Station Totals*"); also available at *http://www.fcc.gov/mb/.*

[23] We recognize that this total differs slightly from that contained in *Broadcast Station Totals, supra* note 446; however, we are using BIA's estimate for purposes of this revenue comparison.

(NCE) television stations to be 390.[24] We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[25] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Class A TV, LPTV, and TV translator stations. The rules and policies proposed in this Notice include licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[26] Currently, there are approximately 537 licensed Class A stations, 2,386 licensed LPTV stations, and 4,359 licensed TV translators.[27] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $14 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirement for Small Entities. The rules proposed in this Further Notice would modify previously proposed rules for measuring digital television signal strength at any specific location. These measurement procedures would be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by DBS providers. Section 339(a)(2)(D)(vi) of the Communications Act (47 U.S.C. 339(a)(2)(D)(vi)) delineates when measurements are necessary and when the satellite communications provider, the digital television broadcast station, or the consumer is responsible for bearing their cost. No reporting requirement is proposed. In this Further IFRA, we seek comment on the types of burdens direct broadcast satellite service providers and digital television broadcast stations will face in complying with the proposed requirements. Entities, especially small businesses and, more generally, small entities are encouraged to quantify the costs and benefits of the proposed reporting requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. 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.[28]

The Further Notice examines only two issues related to our previous proposals regarding DTV signal measurement procedures. As noted in the text, the proposal related to which stations need to be tested would reduce burdens both on businesses that conduct tests and on consumers. This is because the STELA limits the broad universe of stations that need to be tested to only a handful that are located in the same market at the satellite subscriber. This could reduce the amount and complexity of the equipment necessary to conduct a test as well as reduce the complexity of actually conducting the test as fewer stations need to be measured. This should have an accompanying cost savings to consumers as the tests should be less complex. We seek comment on this tentative conclusion especially from small entities.

F. Federal Rules that Might Duplicate, Overlap, or Conflict with the Proposed Rules. None.

Ordering Clauses

37. Pursuant to Sections 1, 4, 301, and 339(c)(3) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 301, 339(c)(3), and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a), this *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking is hereby adopted.*

38. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Certification, and Further IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Communications equipment, Radio and Television.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

Proposed Rules Changes

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend part 73 of title 47 of the Code of Federal Regulations to read as follows:

[24] *See Broadcast Station Totals, supra* note 239.

[25] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

[26] *See* 13 CFR 121.201, NAICS Code 515120.

[27] *See Broadcast Station Totals, supra* note 239.

[28] 5 U.S.C. 603(c).

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Section 73.683(d) is revised to read as follows:

§ 73.683 Field strength contours and presumptive determination of field strength at individual locations.

* * * * *

(d) For purposes of determining the eligibility of individual households for satellite retransmission of distant network signals under the copyright law provisions of 17 U.S.C. 119(d)(10)(A), field strength shall be determined by the Individual Location Longley-Rice (ILLR) propagation prediction model. Guidance for use of the ILLR model for these purposes in predicting the field strength of analog television signals is provided in OET Bulletin No. 72 (stations operating with analog signals include some Class A stations licensed under part 73 of this chapter and some low power TV and TV translator stations licensed that operate under Part 74 of this chapter). Guidance for use of the ILLR model for these purposes in predicting the field strength of digital television signals is provided in OET Bulletin No. 73 (stations operating with digital signals include all full service stations and some Class A stations that operate under part 73 of this chapter and some low power TV and TV translator stations that operate under part 73 or Part 74 of this chapter). OET Bulletin No. 72 and OET Bulletin No. 73 are available at the FCC's Headquarters Building, 445 12th St., SW., Reference Information Center, Room CY–A257, Washington, DC, or at the FCC's Office of Engineering and Technology (OET) Webs site: *http://www.fcc.gov/oet/info/documents/bulletins/*.

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[FR Doc. 2010–19294 Filed 8–3–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2010-0045]
[MO 92210-0-0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status and critical habitat review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on two petitions to list the Mexican gray wolf (*Canis lupus baileyi*) (Mexican wolf) as an endangered subspecies and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). Although not listed as a subspecies, the Mexican wolf is currently listed as endangered within the broader listing of gray wolves. Based on our review, we find that the petitions present substantial scientific or commercial information indicating that the Mexican wolf subspecies may warrant listing such that reclassifying the Mexican wolf as a separate subspecies may be warranted. One of the petitions also requested listing of the Mexican wolf as an endangered Distinct Population Segment (DPS). While we have not addressed the DPS portion of the petition in this finding, we will further evaluate that information during the status review. Therefore, with the publication of this notice, we are initiating a review of the status of the Mexican wolf subspecies to determine if listing the Mexican wolf as a subspecies or DPS is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the Mexican wolf. Based on the status review, we will issue a 12–month finding on the petitions, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before October 4, 2010. After this date, you must submit information directly to the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Search for docket FWS-R2-ES-2010-0045 and then follow the instructions for submitting comments.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R2-ES-2010-0045; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Information Solicited** section below for more details).

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113, by telephone (505-346-2525) or by facsimile (505-346-2542). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Requested

When we make a finding that a petition presents substantial information indicating that listing an entity may be warranted, we are required to promptly review the status of that entity (status review). To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on the status of the Mexican wolf. We request information from the public, other governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the status of the Mexican wolf. We seek information on:

(1) The historical and current status and distribution of the Mexican wolf, its biology and ecology, taxonomy, and ongoing conservation measures for the subspecies and its habitat in the United States and Mexico; and

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting the species' continued existence and threats to it or its habitat.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue a 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your submission (such as full references and page numbers) to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our 12–month finding.

Petition History

On August 11, 2009, we received a petition from the Center for Biological Diversity requesting that the Mexican wolf be listed as an endangered subspecies or DPS and critical habitat be designated under the Act. On August 12, 2009, we received a petition dated August 10, 2009, from WildEarth Guardians and The Rewilding Institute requesting that the Mexican wolf be listed as an endangered subspecies and critical habitat be designated under the Act. The petitions clearly identified themselves as such and included the requisite identification information for the petitioner(s), as required by 50 CFR 424.14(a). On October 22, 2009, we responded with letters to the petitioner(s) indicating that the petitions were under review and that we would make a finding as to whether or not the petitions present substantial information indicating that the requested action may be warranted. In response to complaints from the petitioners, we have agreed, pursuant to a stipulated settlement agreement, to complete the 90–day finding in response to these petitions by July 31, 2010. This finding addresses both petitions.

Previous Federal Actions

The Mexican wolf was listed as an endangered subspecies on April 28, 1976 (41 FR 17742). The gray wolf species (*Canis lupus*) in North America south of Canada was listed as endangered on March 9, 1978, except in Minnesota where it was listed as threatened (43 FR 9607). This listing of the species as a whole subsumed the previous Mexican wolf subspecies listing, although it stated that the Service would continue to recognize valid biological subspecies for the purpose of research and conservation (43 FR 9607). We initiated recovery programs for the gray wolf in three broad geographical regions of the country: the Northern Rockies, the Great Lakes, and the Southwest. In the Southwest, a recovery plan was developed specifically for the Mexican wolf, acknowledging and implementing the regional gray wolf recovery focus on the conservation of the Mexican wolf as a subspecies. The 1982 Mexican Wolf Recovery Plan recommended a two-pronged approach to conservation that included establishment of a captive breeding program and reintroduction of wolves to the wild (Service 1982, p. 28).

In 1996, we published a Final Environmental Impact Statement, "Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States," after assessing potential locations for the reintroduction of the Mexican wolf. On April 3, 1997, the Department of the Interior issued its Record of Decision on the Final Environmental Impact Statement, and on January 12, 1998, a final rule, "Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico" (63 FR 1752), was published and established the Mexican Wolf Experimental Population Area in central Arizona and New Mexico, and designated the reintroduced population as a nonessential experimental population under section 10(j) of the Act. In March of that year, 11 Mexican wolves from the captive breeding program were released to the wild.

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule, we established three DPS designations for the gray wolf. Gray wolves in the Western DPS and the Eastern DPS were reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Mexican wolves in the Southwestern DPS retained their previous endangered or experimental population status. On January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that the April 1, 2003, final rule violated the Act (*Defenders of Wildlife* v. *Norton,* 1:03-1348-JO (D.Or. 2005) and *National Wildlife Federation* v. *Norton,* 1:03-CV-340, (D. Vt. 2005)). The Courts invalidated the revisions of the gray wolf listing, and also invalidated the three DPS designations in the April 1, 2003, rule and the associated special regulations. The status of the Mexican wolf was not changed by the listing rule or the Courts' invalidation of the rule, but the invalidation of the three DPS

designations suspended ongoing recovery planning efforts for the Southwestern DPS as the DPS was no longer considered valid.

Species Information

The Mexican wolf is a genetically distinct subspecies of the North American gray wolf; adults weigh 23–41 kilograms (kg) (50–90 pounds (lbs)) with a length of 1.5–1.8 meters (m) (5–6 feet (ft)) and height at shoulder of 63–81 centimeters (cm) (25–32 inches (in)) (Young and Goldman 1944; Brown 1983, p. 119). Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1983, p. 118); solid black or white Mexican wolves do not exist as seen in other North American gray wolves.

Integration of ecological, morphological, and genetic evidence supports several conclusions relevant to the southwestern United States regarding gray wolf taxonomy and range. First, there is agreement that the Mexican wolf is distinguishable from other gray wolves based on morphological and genetic evidence. Second, recent genetic evidence continues to support the observation that historic gray wolf populations existed in intergradations across the landscape as a result of their dispersal ability (Leonard *et al.* 2005, pp. 9–17). Third, evidence suggests that the southwestern United States (southern Colorado and Utah, Arizona and New Mexico) included multiple wolf populations distributed across a zone of intergradation and interbreeding, although only the Mexican wolf inhabited the southernmost extent (Leonard *et al.* 2005, pp. 9–17). Currently, Mexican wolves exist in the wild only where they have been reintroduced, and that population has oscillated between 40 and 60 wolves since 2003.

Historically, Mexican wolves were associated with montane woodlands and adjacent grasslands (Brown 1983, p. 19) in areas where ungulate prey were numerous. Wolf packs establish territories, or home ranges, in which they hunt for prey. Data from 2008 on the reintroduced Mexican wolf population shows an average home range size of 195 square miles (mi^2) (505 square kilometers (km^2)), with home ranges varying from approximately 60 to 503 mi^2 (155 to 1302 km^2) (Service 2010, p. 37). Recent studies have shown the preferred prey of Mexican wolves to be elk (Reed *et al.* 2006, pp. 1127–1133; Merkle *et al.* 2009, pp. 480–485).

Gray wolves die from a variety of causes including disease, malnutrition, debilitating injuries, interpack strife, and human exploitation and control (Service 1996, p. A-2). In the reintroduced Mexican wolf population, causes of mortality have been largely human-related (vehicular collision and illegal shooting). Additionally, reintroduced Mexican wolves have been removed from the wild for management purposes. To date, the Mexican wolf population has had a failure (mortality plus removal) rate too high for natural or unassisted population growth, and, as stated above, the population has oscillated between 40 and 60 wolves since 2003. The most recent end-of-year population survey in 2009 documented 42 Mexican wolves in the wild (Service 2010, pp. 26, 61).

Evaluation of Information for this Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the subsequent status review, we attempt to determine how significant a threat it is. The threat is significant, if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the information in the petition and our files is substantial. The information must include evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

The petitioners assert that listing the Mexican gray wolf under the Act as a subspecies is both biologically warranted and legally required. It is important to mention that we already recognize the endangered status of the Mexican wolf under the current listing of the gray wolf species (43 FR 9607). However, this 90–day finding evaluates the information provided by the petitioners and other information readily available in our files, and determines whether it is substantial scientific or commercial information indicating that listing of the Mexican wolf as a subspecies may be warranted. Our evaluation of this information is presented below.

The petitioners assert that listing the Mexican wolf as a subspecies under the Act is appropriate on the basis of taxonomy. The petitioners cite Young and Goldman 1994, Hall 1981, Bogan and Melhop 1983, Hoffmeister 1986, Nowak 1995, Leonard *et al.* 2005, Wayne *et al.* 1992, Garcia-Moreno *et al.* 1996, and Hedrick *et al.* 1997 in asserting that the Mexican wolf is clearly identified as a taxonomically valid subspecies. Information in our files support this assertion and indicate that, in the past, the Service has recognized the Mexican wolf as a taxonomically valid subspecies (41 FR 17742; 43 FR 9607).

The petitioners assert the Mexican wolf is in danger of extinction due to four of the five factors set forth at 16 U.S.C. 1533(a)(1)(A)–(E), stating the only factor not considered a threat to the Mexican wolf is Factor B. Several analyses of the five listing factors have been conducted for the Mexican wolf. The initial proposal to list the Mexican wolf as endangered in 1975 (40 FR 17590), and the 1978 listing of the entire gray wolf species as endangered throughout the coterminous United States (except for Minnesota, where it was classified as threatened) (43 FR 9607), found that threats from habitat loss (Factor A), sport hunting (Factor B), and inadequate regulatory protection from human persecution (Factor D) were responsible for the subspecies' decline and near extinction.

We again assessed threats to the Mexican wolf in 2003 as part of the Southwest DPS when we reclassified the gray wolf into three DPSs (68 FR 15804). The reclassification rule stated that habitat destruction or modification (Factor A) was not currently considered a threat or deterrent for restoration of southwestern (Mexican) gray wolves. "Take" for commercial or recreational purposes, Factor B, was not considered a threat, nor were diseases and parasites (Factor C). Illegal killing was considered

in Factor C in the 2003 rule, and was recognized as a factor that may slow, but not likely preclude, recovery in the Southwest. Regulatory protection for reintroduced Mexican wolves was deemed adequate (Factor D). Finally, public attitudes toward gray wolves were cited as a primary determinant in the long-term recovery status of wolves (Factor E), and the 2003 rule anticipated that the potential for human–wolf conflicts would increase as the number of wolves increased.

The most recent analysis of the five listing factors was performed in the Mexican Wolf Conservation Assessment (Service 2010, pp. 44–62). While Factor A was not considered a threat to the current wild population of Mexican wolves, the document states the degree to which habitat alteration may hinder future recovery must consider projections of future events and landscape trends in relation to updated recovery criteria. According to Carroll *et al.* (2003, pp. 536–548; 2006, pp. 25–37), there are a number of adequately sized, ecologically suitable blocks of habitat in the Southwest, southern Rockies, and Mexico for establishment of wolf populations; however, as the petitioners assert, these sites may be impacted in the future by human population growth and associated road development.

The petitioners assert that disease and predation (Factor C) are a current threat to the Mexican wolf. Disease and predation have not been recognized as a threat in any of our analyses. In the recent Conservation Assessment, disease is not considered a threat to the Mexican wolf based on known occurrences in the wild population and the active vaccination program (Service 2010, p. 51). Predation is also not considered a threat to the Mexican wolf because no wild predator regularly preys on wolves (Service 2010, p. 51).

The petitioners assert that regulatory protections for Mexican wolves are inadequate (Factor D). The petitioners refer to restrictions within the 1998 rule (63 FR 1752), recommendations in the program's Three-year review (Paquet *et al.* 2001) that have not been implemented, and an unpublished powerpoint by Parsons and Ossario (2007) to show that current regulatory mechanisms are a primary cause for the failure to reach reintroduction objectives. We will further evaluate the adequacy of existing regulatory mechanisms during our status review.

The petitioners assert that other natural or manmade factors (Factor E) affect the continued existence of the Mexican wolf. The petitioners reference studies of captive Mexican wolves by Hedrick *et al.* (1997) and Fredrickson *et al.* (2007) and assert the Mexican wolf contains reduced genetic diversity from their original population, and that signs of inbreeding depression have been observed such as smaller size, reduced fertility, and lower litter sizes. Information in our files generally supports this assertion. However, while inbreeding may have the potential to decrease fitness, growth rate, and genetic variation of the current wild population unless management actions to increase genetic representation are employed (Service 2010, pp. 58–60), the information presented by the petitioners and readily available in our files does not indicate that inbreeding may be a current threat to the captive population of Mexican wolves.

Finally, the petitioners assert that federal control of wolves, illegal shootings, and vehicular collisions affect the continued existence of the Mexican wolf (Factor E). Information in our files supports the assertion that two sources of human-caused mortality (vehicular collision and illegal shooting) are responsible for the majority of the deaths within the wild population of Mexican wolves, and that the cumulative effects from the combination of human-caused wolf mortality and removal of wolves for management purposes has resulted in a failure rate (combined removal and mortality) too high to allow recovery through unassisted population growth (Service 2010, p. 61).

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90–day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents "substantial scientific and commercial information," which is interpreted in our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). We have reviewed the petitions and the literature cited in the petitions, and evaluated the information to determine whether the sources that were cited supported the petitioned actions. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petitions. Based on our evaluation of the information provided in the petitions, we find that the petitions present substantial scientific or commercial information indicating that listing the Mexican wolf as a subspecies may be warranted. One of the petitions received also included listing the Mexican wolf as a DPS. Since substantial scientific or commercial information was found at the subspecies level, in this finding we did not assess whether the petitions present substantial scientific or commercial information indicating listing the Mexican wolf as a DPS may be warranted. However, we will fully assess whether the species warrants listing as either a subspecies or a DPS in the 12–month finding.

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petitions present substantial scientific or commercial information indicating that reclassification of the gray wolf to list the Mexican wolf as a subspecies throughout its entire range may be warranted. Because we have found that the petitions present substantial information indicating that listing the Mexican wolf as a subspecies may be warranted, we are initiating a status review to determine whether listing the Mexican wolf as a subspecies under the Act is warranted.

The "substantial information" standard for a 90–day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

References Cited

A complete list of references cited in this finding is available upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Author

The primary authors of this notice are the staff members of the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 12, 2010

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–19199 Filed 8–3–10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 75, No. 149

Wednesday, August 4, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 30, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Florida Agricultural Workers Survey.

OMB Control Number: 0563–NEW.

Summary of Collection: The Risk Management Agency (RMA) is authorized under section 522(d) of the Federal Crop Insurance Act to enter into partnership agreements with public and private organizations for the purpose of increasing the availability of loss mitigation, financial, and other risk management tools for producers of agricultural commodities. RMA intends to collect information for purposes of the development of risk management tools to analyze producer risks associated with the employment of seasonal labor in the three Florida selected specialty crops: citrus, tomatoes, and strawberries. Collection of information is necessary for a research project under a USDA/RMA—University of Florida (UF) partnership agreement.

Need and Use of the Information: The information collection will be conducted primarily through in-person surveys. USDA/RMA—UF will use the information to describe the demographic and employment characteristics of Florida's citrus, tomato and strawberry workers. Results of the survey will be used to develop the risk management tools. The tools will enable producers to determine the costs and benefits of utilizing different mixes of labor and capital, given changes in wages and the supply of workers.

Description of Respondents: Farms.

Number of Respondents: 1,808.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 2,107.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. 2010–19134 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—In-Depth Case Studies of Advanced Modernization Initiatives

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This proposed collection is for "In-Depth Case Studies of Advanced Supplemental Nutrition Assistance Program (SNAP) Modernization Initiatives" and is a revision of a currently approved data collection entitled "Enhancing Food Stamp Certification: Food Stamp Modernization Efforts." The proposed collection will build on the data collection efforts of the currently approved collection, which is a purely descriptive study. This comprehensive data collection will allow for the analyses of the potential impact of advanced modernization efforts on Program outcomes in selected States.

DATES: Written comments must be received on or before October 4, 2010.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and (c) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Director, Office of Research and Analysis, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via e-mail to

Steve.Carlson@fns.usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: In-Depth Case Studies of Advanced SNAP Modernization Initiatives.

OMB Number: 0584–0547.

Form Number: N/A.

Expiration Date: April 30, 2011.

Type of Request: Revision of currently approved data collection.

Abstract: The Supplemental Nutrition Assistance Program (SNAP) (formerly known as the Food Stamp Program) is a critical source of support for many low-income families and individuals. In recent years, States have implemented new procedures and policies, commonly referred to as modernization, that focus on reducing SNAP administrative costs while maintaining or improving program access. Though State efforts vary, common initiatives include expanded use of technology, partnerships with community organizations, policy simplifications, and administrative restructuring.

In order to examine how modernization potentially affects key outcome measures—efficiency, access, and integrity—and establish if, and to what extent, the goals of States were met by their modernization efforts, six States have been selected for comprehensive case studies. The selection process employed a modernization index designed to identify States with the most advanced modernization initiatives. Florida, Georgia, Massachusetts, Utah, Washington, and Wisconsin were selected and have agreed to participate in this study. The study will ultimately yield a comprehensive picture of each State's experiences with modernization and assess the potential impacts of modernization. Specifically, the study will identify the steps States have taken to implement modernization changes, the challenges States experienced, and the perceptions of SNAP staff and participants regarding the changes. This information can be used by federal and State policymakers to identify important lessons. Project findings will help these policymakers understand the implications of modernization changes and identify effective modernization practices while avoiding implementation pitfalls.

The project has seven research objectives: (1) Update the existing State profiles of modernization efforts and identify the geographic and caseload coverage affected by modernization changes; (2) describe how key certification, recertification, and case management functions have changed; (3) describe the current roles and responsibilities of State and local SNAP staff, vendors, and partners and how they have changed; (4) document the relationship between SNAP modernization initiatives and stakeholder satisfaction; (5) describe the current performance of each State's modernization initiatives and the level of outcome variability within each State; (6) compare pre-, current, and post-modernization performance; and (7) document the main takeaway points for use by other States and for future study consideration.

Data collection strategies include multiple site visits, during which we will conduct interviews of SNAP staff at all levels, visit multiple local offices, hold focus groups with current participants and eligible nonparticipants, and meet with community-based partner organizations and vendors that contract with State SNAP agencies. Tailored protocols will be used for the interviews. Members for the SNAP participant focus groups will be selected using State SNAP administrative data for current participants. Members of the eligible nonparticipant focus groups will be recruited at local food banks. Potential focus group members will be offered $25 for their participation and $5 for transportation to and from the focus group location. Working parents will be offered an additional $15 for child care. To examine how within-State participation patterns vary with within-State differences in modernization, the study will also collect and analyze monthly State case record extant data. Each of the six States will receive remuneration of $75,000 to offset the costs of participating in the study.

Interview and focus group questions will be kept as simple and respondent-friendly as possible. Responses to all questions will be voluntary. The contractor will take the following steps to treat the data provided in a confidential manner: (1) No data will be released in a form that identifies individual respondents by name; and (2) information collected through interviews will be combined across other respondents in the same category and reported only in aggregate form. Respondents will be notified of these confidentiality measures during data collection.

Affected Public: State, local or tribal government; businesses or other for-profits; not-for-profit institutions; individuals or households. Respondent groups identified include: (1) SNAP staff at the State, regional, and local levels, including staff of call centers and other specialized units; (2) staff from community partners and vendors or businesses assisting with modernization efforts; and (3) current SNAP participants and eligible non-participants.

Estimated Number of Respondents: The study will collect data from a total of 606 respondents across all States. This number represents the sum of 33 State-level SNAP staff interviews; 84 district/county SNAP staff interviews; 21 interviews at SNAP call center staff or other centralized operation units staff; 154 local office SNAP staff interviews; 14 interviews with vendors; 60 interviews with staff members from community partners involved in modernization; and 120 SNAP participants and 120 eligible non-participants.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: For all interviews of State SNAP staff, district/county SNAP staff, SNAP call center staff or centralized operation units staff, local office SNAP staff, vendor staff, and community partner staff, the burden estimate is 1.5 hours and includes respondents' time to prepare for and complete the interview. For all participating members in the focus groups, the burden estimate is 1.667 hours (100 minutes) and includes respondents' time to be screened, receive a reminder call, read a reminder letter, and to participate in the group. For all persons who decline to participate in the focus groups, the burden estimate is .0835 hours (5 minutes) and includes the respondents' time to be screened (see table below).

Estimated Total Annual Burden on Respondents and Non-Responders: Total of 1,009.1 hours, including: State SNAP staff, 49.5 hours; district/county SNAP staff, 126 hours; SNAP call center staff or centralized operation units staff,

31.5 hours; local office SNAP staff, 231 hours; vendor staff, 21 hours; community partner staff, 90 hours; SNAP participants, 200 hours; eligible non-participants, 200 hours. In addition, respondents who elect not to participate in the focus groups (refusers), the estimated total burden is 60.1 hours. The number of refusers is based on the assumption that in order to have 240 respondents ultimately attend the focus groups, 480 persons will need to be recruited. And in order for 480 persons to be recruited, twice as many persons, or 960, will need to be contacted initially.

Affected public	Respondent type	Estimated number respondents	Responses annually per respondent	Total annual responses	Estimated avg. number of hours per response	Estimated total hours
State, Local and Tribal Agencies.	State SNAP staff	33	1	33	1.5	49.5
	District/County SNAP staff	84	1	84	1.5	126.0
	Call Center staff or centralized operation unit staff.	21	1	21	1.5	31.5
	Local office SNAP staff	154	1	154	1.5	231.0
Business (for and not-for-profit).	Vendor staff	14	1	14	1.5	21.0
	Community partner staff	60	1	60	1.5	90.0
Individuals & Households	SNAP participants*	120	1	120	1.667	200.0
	SNAP eligible nonparticipants*.	120	1	120	1.667	200.0
	Non-Responders (Focus group).	720	1	720	0.0835	60.1
Total		1,326		1,326		1,009.1

* Focus Group members will participate in a brief screening call or interview, participate in the focus group, and receive a reminder call and letter prior to the focus group.
** Focus Group refusers will participate in a brief screening call or interview.

Dated: July 23, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–19074 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2008-0140]

Changes to Treatments for Sweet Cherries from Australia and Irradiation Dose for Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of changes to phytosanitary treatments.

SUMMARY: We are advising the public that we are adding new approved phytosanitary treatment schedules to the Plant Protection and Quarantine Treatment Manual for sweet cherries imported from Australia into the United States. We are also adding to the treatment manual a new approved irradiation dose for Mediterranean fruit fly of 100 gray. These new treatments will continue to prevent the introduction or interstate movement of quarantine pests in the United States.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P.S. Gadh, Senior Risk Manager–Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatments regulations contained in 7 CFR part 305 (referred to below as the regulations) set out general requirements for conducting treatments indicated in the Plant Protection and Quarantine (PPQ) Treatment Manual[1] for fruits, vegetables, and articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States.

On October 19, 2009, we published in the **Federal Register** (74 FR 53424-53430, Docket No. APHIS-2008-0140) a proposal[2] to amend the regulations by adding new treatment schedules for sweet cherries and for certain species of citrus fruit imported from Australia into the United States.[3] We also proposed to establish an approved irradiation dose for Mediterranean fruit fly (Medfly) of 100 gray. Our analysis of the efficacy of the proposed treatments was presented in a treatment evaluation document that was made available with the proposed rule.

We solicited comments concerning our proposal for 60 days ending December 18, 2009, and received five comments by that date. They were from a State plant protection official, a research entomologist, a foreign national plant protection organization representative, and two students. We have carefully considered the comments we received. One commenter simply pointed out a misspelling in a footnote. The issues raised by the remaining commenters are discussed below.

One commenter, while agreeing with the changes we proposed, expressed concern that the proposal mentioned no requirement for field monitoring of fruit flies or subsequent field treatment when fruit fly populations exceed a defined limit. The commenter added that even if the treatments we propose achieve a probit-9 level of efficacy, the possibility remains that heavy infestations of fruit flies could overwhelm the treatments.

The national plant protection organization (NPPO) of Australia is a signatory to the International Plant Protection Convention (IPPC) and therefore observes IPPC guidelines for pest surveillance, monitoring, and

[1] The PPQ Treatment Manual can be viewed on the Internet at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml*).

[2] To view the proposed rule, the comments we received, and the treatment evaluation document, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0140*).

[3] The treatment schedules for citrus fruit from Australia that we had proposed will be published in the PPQ Treatment Manual at a later date. When these schedules are published, we will publish a notice of these changes in the **Federal Register**.

information collection in its production areas. Should fruit fly populations increase in these areas, the Animal and Plant Health Inspection Service (APHIS) would have the information and resources readily at hand to respond effectively.

Another commenter who agreed with our proposed treatment changes asked whether the reduced irradiation dose of 100 gray we proposed as a treatment for Medfly would result in improved fruit quality and longer shelf life for sweet cherries.

We have no evidence to suggest that a 100 gray dose would result in improved fruit quality or shelf life. In fact, our experience indicates that an irradiation dose of 150 gray has no discernible positive or negative effect on fruit quality, making it less likely that a dose of 100 gray will have any such effect.

The same commenter also wanted to know if the reduced irradiation dose we proposed for Medfly would be effective for other types of fruit flies.

We have established that the 100 gray dose is effective against certain species of *Anastrepha* and *Bactrocera* fruit flies and the approved irradiation doses listed for these species in the PPQ Treatment Manual are already 100 gray or lower. For all other fruit flies of the family Tephritidae, the approved dose is 150 gray. Additional testing would be necessary to confirm whether a 100 gray dose would serve as an efficacious treatment for other species of fruit fly.

One commenter stated that the proposed treatment changes would allow the Australian cherry industry to benefit unfairly from lower treatment costs, thereby putting emerging cherry-producing countries in the Middle East such as Turkey and Iran at an economic disadvantage in the world cherry market.

The treatments discussed in the proposed rule with respect to Australia are specific to the pests present there, Medfly and Queensland fruit fly, and were evaluated with respect to their efficacy, not their costs. Cherries from another region with the same pest complex could be treated in the same manner, so we disagree that Australian cherry producers are receiving any sort of unfair benefit.

Another commenter, a representative of the Australian NPPO, observed that the State of Tasmania is not included in the areas of Australia listed by APHIS as free of fruit flies. The commenter noted that the APHIS Fruits and Vegetables Import Requirements database specifically lists cherries, apples, and pears from Tasmania as being permitted access to the United States without the requirement for a phytosanitary treatment for fruit flies. The commenter asked that Tasmania be added to APHIS' list of approved pest-free areas.

For a given plant pest, APHIS makes a distinction between pest-free areas and areas that have never been known to support that pest in sufficient numbers to be a threat to agriculture; Tasmania is an example of the latter with regard to fruit flies. If a particular quarantine pest has never been known to be associated with the regulated article in the country or region of origin, we do not usually include that country or region on the list of pest-free areas for that pest. Because the cooler climate and geographical isolation of Tasmania inhibit a resident fruit fly population from establishing itself there, we do not consider it necessary to include Tasmania on the list of approved pest-free areas.

Revision of Treatments Regulations

Following the publication of our October 2009 proposed rule, we published a final rule that amended the regulations by removing all phytosanitary treatments and treatment schedules from 7 CFR part 305, while retaining general treatment requirements.[4] The sections in part 305 we had proposed to amend no longer exist, so the modified treatments will instead be added to the appropriate sections of the PPQ Treatment Manual. The regulations now indicate that all approved treatments and treatment schedules are contained in the PPQ Treatment Manual.

Accordingly, the PPQ Treatment Manual has been amended to include the new treatments for sweet cherries from Australia and a specific irradiation dose of 100 gray for Medfly.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 29th day of July 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–19135 Filed 8–3–10; 10:12 am]

BILLING CODE 3410–34–S

[4] 75 FR 4228-4253, Docket No. APHIS-2008-0022, published January 26, 2010, and effective February 25, 2010.

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, August 18, 2010. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held August 18, 2010 at 6 p.m.

ADDRESSES: The meeting will be held at the Ketchikan-Misty Fjords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan-Misty Fjords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 26, 2010.

Jeff DeFreest,

District Ranger.

[FR Doc. 2010–19042 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The West Virginia Resource Advisory Committee will meet in Elkins, West Virginia. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on August 27, 2010, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Monongahela National Forest Supervisor's Office, 200 Sycamore Street, Elkins, WV 26241. Written

comments should be sent to Kate Goodrich-Arling at the same address. Comments may also be sent via e-mail to *kgoodricharling@fs.fed.us,* or via facsimile to 304–637–0582.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241.

FOR FURTHER INFORMATION CONTACT: Kate Goodrich-Arling, RAC coordinator, USDA, Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241; (304) 636–1800; E-mail *kgoodricharling@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel. (2) Selection of a chairperson by the committee members. (3) Receive materials explaining the process for considering and recommending Title II projects; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: July 29, 2010.

Clyde N. Thompson,

Designated Federal Officer.

[FR Doc. 2010–19115 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forestry Research Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forestry Research Advisory Council will meet in Washington, DC September 8–9, 2010. The purpose of the meeting is to discuss emerging issues in forestry research.

DATES: The meeting will be held September 8–9, 2010. On September 8 the meeting will be from 8:30 a.m. to 5 p.m., and on September 9 from 8:30–noon.

ADDRESSES: The meeting will be held in Room 104–A Whitten Building, 1400 Independence Ave., SW., Washington, DC. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals by August 31, 2010 to Daina Apple, Designated Federal Officer, Forestry Research Advisory Council, USDA Forest Service Research and Development, 1400 Independence Ave., SW., Washington, DC 20250–1120, or fax their names and proposed agenda items to (202) 205–1530.

FOR FURTHER INFORMATION CONTACT: Daina Apple, Forest Service Office of the Deputy Chief for Research and Development, (202) 205–1665. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service, National Institute for Food and Agriculture staff and Council members. However, persons who wish to bring forestry research matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

Dated: July 26, 2010.

Carlos Rodriguez-Franco,

Acting Deputy Chief for Research and Development.

[FR Doc. 2010–19142 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Channel Bed Stabilization (Code 584), Dust Control From Animal Activity on Open Lot Surfaces (Code 375), Karst Sinkhole Treatment (Code 527), Lined Waterway or Outlet (Code 468), Monitoring Well (Code 353), On-Farm Equipment Efficiency Improvement (Code 374), Pond Sealing or Lining—Bentonite Treatment (Code 521C), Pond Sealing or Lining—Compacted Clay Treatment (Code 521D), Pond Sealing or Lining—Soil Dispersant Treatment (Code 521B), Salinity and Sodic Soil Management (Code 610), Stream Habitat Improvement and Management (Code 395), Vertical Drain (Code 630), Water Well (Code 642), Water Well Decommissioning (Code 351), and Well Water Testing (Code 355).

NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guides. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

DATES: *Effective Date:* This is effective August 4, 2010.

Comment Date: Submit comments on or before September 3, 2010. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day comment period, and after consideration of all comments.

ADDRESSES: Comments should be submitted using any of the following methods:

- *Mail:* Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6136 South Building, Washington, DC 20250.
- *E-mail: wayne.bogovich@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6136 South Building, Washington, DC 20250.

Electronic copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/.* Requests for paper versions or inquiries may be directed to Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400

Independence Avenue SW., Room 6136 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the Conservation Practice Standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version as shown at *http://www.nrcs.usda.gov/technical/Standards/nhcp.html.* To aid in this comparison, following are highlights of the proposed revisions to each standard:

Channel Bed Stabilization (Code 584)—Name changed for better description, plus minor edits.

Dust Control From Animal Activity on Open Lot Surfaces (Code 375)—This is a new Conservation Practice Standard.

Karst Sinkhole Treatment (Code 527)—Practice name changed from "Sinkhole and Sinkhole Area Treatment" to "Karst Sinkhole Treatment." Practice specially does not apply to sinkholes with non-karst origins (structural failures due to piping, etc.), plus minor edits.

Lined Waterway or Outlet (Code 468)—Changes to the standard include: A revision in the range in Manning's roughness and references cited in the criteria section; an expansion of the considerations section to include fish and wildlife and soil bioengineering, etc.; and more comprehensive guidance on what should be included in the plans and specifications section.

Monitoring Well (Code 353)—Updated references to ASTM standards and minor edits.

On-Farm Equipment Efficiency Improvement (Code 374)—This is a new Conservation Practice Standard.

Pond Sealing or Lining—Bentonite Treatment (Code 521C)—The standard was revised to better match the changes to our technical guidance document National Engineering Handbook Series, Part 651, Agricultural Waste Management Field Handbook (AWMFH), Chapter 10, Appendix 10D.

Pond Sealing or Lining—Compacted Clay Treatment (Code 521D)—The standard was revised to better match the changes to our technical guidance document National Engineering Handbook Series, Part 651, AWMFH, Chapter 10, Appendix 10D.

Pond Sealing or Lining—Soil Dispersant Treatment (Code 521B)—The standard was revised to better match the changes to our technical guidance document National Engineering Handbook Series, Part 651, AWMFH, Chapter 10, Appendix 10D.

Salinity and Sodic Soil Management (Code 610)—Clarified the Conditions Where Practice Applies and General Criteria Applicable to All Purposes sections. Added separate sections for Criteria Applicable to Irrigated Lands and to Non-Irrigated Lands. Expanded the sections for Criteria To Reduce Problems of Crusting, Permeability or Soil Structure on Sodium-Affected Soils, and to Saline Seeps and Their Recharge Areas. Expanded the Considerations section. Added detailed requirements for Plans and Specifications. Deleted the Operation and Maintenance section. Reduced the References section.

Stream Habitat Improvement and Management (Code 395)—Changed "Stream Visual Assessment Protocol" to "Stream Visual Assessment Protocol, Version 2," changed considerations, added monitoring guidelines for evaluating the effectiveness of the conservation actions, and added post-project monitoring to Operation and Maintenance.

Vertical Drain (Code 630)—Additional emphasis on water quality protection if practice is used.

Water Well (Code 642)—Purpose clarified to exclude human consumption. Screen entrance velocity criteria changed in accordance with AWWA standard.

Water Well Decommissioning (Code 351)—Name was changed to Water Well Decommissioning, distinguishing this practice from industry practices for closure of other purposed wells (oil, injection, etc.). Purpose was clarified. Additional clarification on plugging materials was added.

Well Water Testing (Code 355)—Conditions Where Practice Applies has been updated to exclude water wells not for agricultural use, plus minor edits.

Signed July 29, 2010, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2010–19133 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request for Proposals: Fiscal Year 2010 Funding Opportunity for Research on the Economic Impact of Cooperatives (REIC)

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Initial notice of request for proposals.

SUMMARY: Rural Business-Cooperative Service programs are administered through USDA Rural Development. USDA Rural Development announces the availability of $300,000 in competitive cooperative agreement funds for fiscal year (FY) 2010 to conduct research on the national economic impact of all types of cooperatives. USDA Rural Development hereby requests proposals from institutions of higher education interested in applying for a competitively awarded cooperative research agreement. This funding follows previous funding awarded in FY 2006, FY 2007, FY 2008, and FY 2009, the intent of which was to encourage research on the critical issue of the economic value of cooperatives. Funding for FY 2010 is expected to expand upon research undertaken with FY 2006, FY 2007, FY 2008 and FY 2009 funds.

DATES: Interested parties may submit completed applications for the cooperative agreement on paper or electronically according to the following deadlines:

Paper copies must be received by September 1, 2010, to be eligible for FY 2010 funding. Electronic copies must be received by September 1, 2010, to be eligible for FY 2010 funding. Late applications are not eligible for FY 2010 funding.

ADDRESSES: Applicants may obtain application forms, guides, and materials for the cooperative agreement at *http://www.rurdev.usda.gov/rbs/coops/reic.htm* or by contacting USDA Rural Development at (202) 720–8460, (TDD: (800) 877–8339, Federal Information Relay Service) and ask for the cooperative research agreement application package.

Submit completed paper applications for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558.

Submit electronic applications at *http://www.grants.gov,* following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/reic.htm,* which contains application guidance, including an Application Guide and application forms. Or you may contact USDA Rural Development at (202) 720–8460 (TDD: (800) 877–8339 Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all "collections of information" by USDA Rural Development. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A)) Because the RFP is expected to receive less than 10 respondents, the "collection of information" requirement in the Paperwork Reduction Act does not apply.

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Research on the Economic Impact of Cooperatives.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.778.

Dates: You may submit completed applications for the cooperative agreement on paper or electronically according to the following deadlines:

Paper copies must be received by September 1, 2010, to be eligible for FY 2010 funding. Late applications are not eligible for FY 2010 funding.

Electronic copies must be received by September 1, 2010, to be eligible for FY 2010 funding. Late applications are not eligible for FY 2010 funding.

I. Funding Opportunity Description

This solicitation is issued pursuant to the Appropriations Act, 2010 (Pub. L. 111–80) directing funds "for a cooperative research agreement with a qualified academic institution to conduct research on the national economic impact of all types of cooperatives." The Secretary of Agriculture has delegated the program's administration to USDA Rural Development.

The primary objective of this cooperative research agreement program is to facilitate university research on the national economic impact of cooperatives. This cooperative research agreement is a continuation of research conducted in USDA Rural Development cooperative research agreements RD–06–01, RBS–07–31, RBS–08–00 and RBS–09–00, collectively known as "REIC Agreements". As further described below, data generated and results produced in the REIC Agreements will be accessible to the institution awarded this cooperative research agreement.

These agreements have produced the first census data of U.S. cooperatives across economic sectors, reporting their financial variables and employment data. Based on this census, cooperatives' direct and indirect impacts on national revenue, income and employment were estimated. Standard estimation methods, as applied to all types of business organizations, were used to obtain the economic estimates. These estimation methods do not measure distinctive and deeper economic impacts of cooperatives, which is the overall objective of this research program.

Two research initiatives were launched in FY 2009 that will help increase public and academic awareness of cooperatives. First, a more detailed survey sample, called the Cooperative Business Study, was launched to address the elements of member governance that influence distinctive policies in the operations and impacts of cooperatives. Further surveys of these sample cooperatives will examine in comprehensive detail the subjects of finance and human resources. Second, a program for annual collection of cooperative data by the U.S. Census Bureau was initiated. Completing these initiatives launched in 2009, will be a part of the work plan for FY 2010.

The cooperative agreement proposal must address specifically, and in detail sufficient to assess the effectiveness of proposed work, how the following deliverables will be provided:

1. Complete a proposal to the U.S. Census Bureau for annual collection of data on cooperatives, involving criteria for identifying businesses and organizations as cooperatives.

2. Complete the first phase of the Cooperative Business Study on governance.

3. Develop research proposals for further surveys of the sample of cooperatives on the topics of finance, human resources, and other avenues of inquiry that provide a basis for examining the distinctive and deeper impacts of cooperatives.

4. Initiate research projects in the following subjects:

a. Economic resiliency—comparing and contrasting cooperatives with other types of firms on various measures of sustaining their operations or maintaining services over time or during and after economic recessions.

b. Competitive yardstick—measure the impact of cooperatives in maintaining competitive prices for producers and consumers, or in terms of supporting services that would be provided to some diminished degree in the absence of cooperatives.

c. Local impact—identify the extent to which local communities or rural areas have developed and retained more wealth because of the operations of cooperatives.

5. USDA Rural Development will arrange for the winner of this competition to obtain updates and preliminary data from the University of Wisconsin, the FY 2006, FY 2007, FY 2008 and FY 2009 award recipient, as further progress is made on the FY 2006, FY 2007, FY 2008 and FY 2009 research.

6. The performance of subcontracting services, oversight, and financial controls for the overall project.

7. The submission of quarterly progress reports and quarterly financial reports to USDA Rural Development; and

8. The preparation and submission of publishable quality written reports for Deliverables 1 through 4 to USDA Rural Development.

USDA Rural Development will competitively award one cooperative agreement to fund the collection and analysis of data to determine the national economic impact of cooperatives. An institution of higher education may collaborate with others on the research and data collection. A formal consortium of academic institutions is allowed.

Definitions

The definitions at 7 CFR 3019.2 are incorporated by reference.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2010.

Approximate Total Funding: $300,000.

Approximate Number of Awards: 1.

Approximate Average Award: $300,000.

Floor of Award Range: None.

Ceiling of Award Range: $300,000.

Anticipated Award Date: September 24, 2010.

Budget Period Length: 24 months.

Project Period Length: 24 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be institutions of higher education. Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations funded by a group of colleges or universities.

B. Cost Sharing or Matching

Matching funds are not required but are highly encouraged. Applicants must verify in their applications that matching funds are available for the

time period of the agreement if the matching funds are required to complete the project. Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching funds must be spent on eligible expenses and must be from eligible sources.

C. Other Eligibility Requirements

Indirect Cost Eligibility: Section 705 of Public Law 111–80, "Agriculture, rural development, food and drug administration and related agencies appropriations act, 2010" continues the provision which states "No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties. This does not preclude appropriate payment of indirect costs on grants and contracts with such institutions when such indirect costs are computed on a similar basis for all agencies for which appropriations are provided in this Act." Indirect costs in excess of 10 percent of the direct cost, therefore, will be ineligible for funding.

Activity Eligibility: A cooperative agreement reflects a relationship between the United States Government and an eligible recipient where the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out the desired research; and substantial involvement is anticipated between USDA Rural Development acting for the United States Government and the eligible recipient during the performance of the research in the agreement. A cooperative agreement is not a grant. Therefore, the project proposed must include a description of USDA Rural Development's substantial participation. USDA Rural Development may subsequently negotiate the nature of its participation before the cooperative agreement is executed.

Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible, and the application will not be considered for funding. However, if an application with 10 percent or less of ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the award will be reduced accordingly.

Cooperative Agreement Period Eligibility: Applications that have a timeframe of more than 24 months will be considered ineligible and will not be considered for funding. Applications that request funds for a time period ending after September 30, 2012, will not be considered for funding.

Completeness Eligibility: Applications without sufficient information to determine eligibility will not be considered for funding. Applications that are missing any required elements (in whole or in part) will not be considered for funding.

IV. Application and Submission Information

A. Address To Request Application Package

If you plan to apply using a paper application, you can obtain the application package for this funding opportunity at *http://www.rurdev.usda.gov/rbs/coops/reic.htm.* If you plan to apply electronically, you must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

You may submit your application in paper or in an electronic format. You may view the Application Guide at *http://www.rurdev.usda.gov/rbs/coops/reic.htm.*

If you submit your application in paper form, you must submit one signed original of your complete application along with two additional copies.

If you submit your application electronically, you must follow the instructions given at *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding:

1. *Form SF–424,* "*Application for Federal Assistance.*" In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number (EIN), the start and end dates of the project, the Federal funds requested, other funds that will be used as matching funds, an answer to the question, "Is applicant delinquent on any Federal debt?", the name and signature of an authorized representative, the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete.

The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Applicants can receive a DUNS number at no cost by accessing *http://www.dnb.com/us/* or calling (866) 705–5711.

2. *Form SF–424A,* "*Budget Information—Non-Construction Programs.*" In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both Federal and any matching funds to be included.

3. *Form SF–424B,* "*Assurances—Non-Construction Programs.*" In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date.

4. *Title Page.* The title page must include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

5. *Table of Contents.* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the title page.

6. *Executive Summary.* A summary of the proposal, not to exceed one page, must briefly describe the project, including goals, tasks to be completed, and other relevant information that provides a general overview of the project. In the event an applicant submits more than one page for this element, only the first page submitted will be considered.

7. *Eligibility Discussion.* A detailed discussion, not to exceed four pages, will describe how the applicant meets the eligibility requirements. In the event that more than four pages are submitted, only the first four pages will be considered.

i. *Applicant Eligibility.* The applicant must first describe how it meets the definition of an institution of higher education.

ii. *Purpose Eligibility.* The applicant must describe how the project purpose is eligible for funding. The project purpose is comprised of two components. First, the applicant must describe how the proposed project consists of activities needed to

determine the national economic impact of all types of cooperatives. Second, the applicant must demonstrate that the combined activities are sufficient to estimate the national economic impact of all types of cooperatives.

8. *Proposal Narrative.* The narrative must include the following information:

i. *Project Title.* The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. It should match the project title submitted on the SF–424. The project title does not need to appear on a separate page. It can be included on the title page and/or on the information sheet.

ii. *Information Sheet.* A separate one-page information sheet listing each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material contained in the proposal that address or support each criterion.

iii. *Goals of the Project.* A clear statement of the ultimate goals of the project must be included. There must be an explanation of how economic benefit will be measured.

iv. *Workplan.* The narrative must contain a description of the project and set forth the tasks involved in reasonable detail. The description should specify the activity, who will perform the activity, during what timeframe the activity will take place, and the cost of the activity. Please note that one of the proposal evaluation criteria evaluates the work plan and budget. Applicants should only submit the work plan and budget once, either in this section or as part of the work plan/budget evaluation criterion discussion.

v. *Proposal Evaluation Criteria.* Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form.

9. *Certification of Judgment.* Applicants must certify that the United States has not obtained a judgment against them. No Federal funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. "[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it." A separate signature is not required.

10. *Verification of Matching Funds.* Matching funds are not required but are highly encouraged. If matching funds are provided, applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify any and all matching funds, both cash and in-kind. All proposed matching funds must be specifically documented in the application. If the matching funds are to be provided by an in-kind contribution from the applicant, the application must include a signed letter from an authorized representative of the applicant verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. If the applicant is paying for goods and services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification of funds donated outside the proposed time period of the cooperative agreement will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Verification of in-kind contributions donated outside the proposed time period of the cooperative agreement will not be accepted. Verification of in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the award may not be made.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this cooperative agreement program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this program. The matching funds must be spent or donated during the agreement period. (*See* 7 CFR parts 3015 and 3019 for funds use eligibility rules.)

If acceptable verification for all proposed matching funds is missing from the application by the application deadline, the application will receive zero points for the Funding Match part of the evaluation criteria.

C. Submission Dates and Times

Application Deadline Date: September 1, 2010.

Explanation of Deadlines: Paper applications must be received by the deadline date (*see* Section IV.F. for the address). Final electronic applications must be received by *http://www.grants.gov* by the deadline date. If your application does not meet the deadline above, it will not be considered for funding. You will be notified whether or not your application was received on time.

D. Intergovernmental Review of Applications

Executive Order 12372, Intergovernmental Review of Federal Programs, does not apply to this program.

E. Funding Restrictions

Funding restrictions apply to both Federal funds and matching funds. Funds may only be used for activities related to determining the economic impact of cooperatives.

No funds made available under this solicitation shall be used to:

1. Pay for the preparation of the cooperative agreement application;
2. Pay expenses not directly related to the funded project;
3. Fund political or lobbying activities;
4. Fund any activities prohibited by 7 CFR parts 3015 or 3019;
5. Duplicate current services or replace or substitute support previously provided;
6. Pay costs of the project incurred prior to the date of agreement approval; or
7. Pay any judgment or debt owed to the United States.

F. Other Submission Requirements

You may submit your paper application for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016-South, 1400 Independence Ave., SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558. You may also choose to submit your application electronically at *http://www.grants.gov.* Final applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Any application submission in a non-electronic format must contain all required documents in one envelope.

V. Application Review Information

A. Criteria

All eligible and complete applications will be evaluated based on the following criteria and maximum point allowances. Failure to address any one of the following criteria by the application deadline will result in a determination of incomplete and the application will not be considered for funding. The total points available for the set of criteria are 100.

1. *Relevance of the project proposal (30 points).* Proposals will be evaluated on how directly they address the general objective of demonstrating economic impact of all types of cooperatives in the United States. Factors to be weighed by evaluators in scoring a proposal's relevance will include the:

- Description of how research projects would measure differences of economic impacts of cooperatives as compared to other forms of business organization;
- Description of sound data collection and analysis methodology; and
- Description of a program of assisting the Census Bureau in identifying cooperatives for annual data collection.

2. *Quality of work plan (30 points).* The quality evaluation criterion will be based on whether the proposal outlines a sound plan of work that will meet the objectives in a timely and cost-efficient manner. Factors to be weighed by evaluators in scoring a proposal's work plan will include:

- How well the steps for carrying out the work are defined;
- The logic of the sequence of proposed steps and the likelihood they will achieve their intended result;
- The establishment of clear benchmarks and timetables to measure the progress of the project;
- The detail, accuracy, and reasonableness of the project's proposed budget; and

3. *Quality of personnel and management plan (20 points).* The quality of the management plan and the personnel involved in carrying out the proposed project will evaluate the capabilities of the individuals and institutions to implement the work plan in an effective manner. Factors to be weighed by evaluators in scoring a proposal's personnel and management plan will include the:

- Experience of project leaders and the lead institution in managing complex research projects;
- Demonstration of a clear understanding of business models and general economic development;
- Management controls, progress measurements, and reporting systems within a structured project management plan; and
- Experience and relevant skills of researchers, consultants, and subcontractors assigned to carry out specific roles in the project.

4. *Cooperative and academic community support (20 points).* Points will be awarded for having support for the proposal from both cooperative and academic communities. This support should be evidenced by either contribution of resources or by statements from representatives about the value of the proposed research to their organizations or communities.

B. Review and Selection Process

Each application will be initially reviewed by Rural Development personnel for eligibility and to determine whether all required elements are complete. A list of required elements follows:

- SF–424
- SF–424A
- SF–424B
- Title Page
- Table of Contents
- Executive Summary
- Applicant Eligibility Discussion
- Purpose Eligibility Discussion
- Project Title
- Information Sheet
- Goals of the Project
- Work Plan
- Proposal Evaluation Criterion 1
- Proposal Evaluation Criterion 2
- Proposal Evaluation Criterion 3
- Proposal Evaluation Criterion 4
- Certification of Judgment
- Verification of any Matching Funds

Any incomplete or ineligible applications will not be further evaluated or considered for funding.

All eligible and complete proposals will be evaluated by a team of at least three reviewers based on criteria 1 through 4 described in paragraph A of this section. Reviewers will represent the Rural Development broad mission area, and will include at least three employees of USDA.

Once the scores for criteria 1 through 4 have been independently completed by the three reviewers, the scores will be used to rank the proposals. If the three reviewers rank the best proposal differently then, with the aid of a facilitator, the three reviewers will develop a consensus ranking. If the three reviewers cannot reach a consensus, two additional reviewers will review the proposals and be added to the rankings. A final ranking will be obtained based on the consensus rankings of the three member review panel, or, if appointed, the average of the five reviewers' rankings. Final award recommendation will be sent to the Under Secretary for Rural Development for final selection concurrence.

After the award selection is made, all applicants will be notified of the status of their applications by mail. The awardee must meet all statutory and regulatory program requirements in order to receive the award. In the event that an awardee cannot meet the requirements, the award will be withdrawn.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selection is expected to occur on or about September 24, 2010.

VI. Award Administration Information

A. Award Notices

The successful applicant will receive a notification of tentative selection for funding from USDA Rural Development. The applicant must sign a mutually agreed to cooperative agreement and comply with all applicable statutes, regulations, and this notice before the award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

This award is subject to 7 CFR parts 3015 and 3019. These regulations may be accessed at *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1.*

The following additional documentation requirements apply to the awardee selected for this program:

- Agency Approved Cooperative Agreement.
- Form RD 1940–1, "Request for Obligation of Funds."
- Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions."
- Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions."
- Form AD–1049, "Certification Regarding a Drug-Free Workplace Requirements (Grants)."
- Form RD 400–1, "Equal Opportunity Agreement."
- Form RD 400–4, "Assurance Agreement."

Additional information on these requirements can be found at *http://*

www.rurdev.usda.gov/rbs/coops/reic.htm.

Reporting Requirements: You must provide USDA Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on your Cooperative Agreement. Failure to submit satisfactory reports on time may result in suspension or termination of your award.

1. *Form SF–425 or SF–425A.* A "Financial Status Report," listing expenditures according to agreed upon budget categories, on a quarterly basis. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends.

2. *Quarterly performance reports that compare accomplishments to the objectives stated in the proposal.* Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, questionnaire or interview guides, publications of research findings, summaries of data collected, and any other documentation related to how funds were spent.

3. *Final Project performance reports that compare accomplishments to the objectives stated in the proposal.* Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the work plan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds should be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks include, but are not limited to, publications of research findings, summaries of data collected, documentation of data and software delivered to USDA Rural Development, and any other documentation related to how funds were spent. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the USDA Rural Development's Cooperative Programs, Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250, Telephone: (202) 720–8460 (TDD: (800) 877–8339 Federal Information Relay Service), e-mail: *cpgrants@wdc.usda.gov.*

VIII. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: July 26, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–19155 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders Regarding Assessments Focused on Improving Food Aid and Providing Safe Water

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The National Institute of Food and Agriculture (NIFA), formerly known as the Cooperative State Research, Education, and Extension Service (CSREES) requests input from the public regarding (1) the assessment of methods and tools used by non-governmental organizations and international agencies to measure, characterize and describe nutritional gaps among populations served by U.S. humanitarian food assistance programs, including recommendations on how to improve such programs in the field at the lowest possible cost, and (2) the assessment of the most cost-effective technologies for the purification and supply of safe water which could be implemented in the field to benefit highly vulnerable populations, including recommendations on the most cost-effective and commercially available systems that require priority research assistance.

DATES: All comments must be received by close of business (5 p.m. EST) September 3, 2010, to be considered.

ADDRESSES: You may submit comments, identified by [2010–0003] by any of the following methods to the NIFA Docket Clerk; and electronic submissions are preferred:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: FANEP@nifa.usda.gov. Include [2010–0003] in the subject line of the message.

Fax: (202) 690–2355.

Hand Delivery/Courier: FANEP; Science and Education Resources Development (SERD) Unit, National Institute of Food and Agriculture, U.S. Department of Agriculture, Room 3322 Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

Mailing Address: FANEP; Science and Education Resources Development (SERD) Unit, National Institute of Food and Agriculture, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 2203, Washington, DC 20250–2203.

Instructions: All submissions received must include the agency name and the [2010–0003] for this rulemaking. A summary of the results obtained from the responses to this request for information will be available to the public on the Web site *http://www.regulations.gov,* and may include any personal information provided.

FOR FURTHER INFORMATION CONTACT: Dr. Edwin Lewis, International Program Leader, National Institute of Food and Agriculture, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 2203, Washington, DC 20250–2203, Phone: (202) 720–3801.

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Food and Agriculture (NIFA), established in Section 7511 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), serves the nation's needs by supporting exemplary research, education, and extension that address many challenges facing the nation. NIFA works with scientists at universities and colleges throughout the United States and around the world to find innovative solutions to critical issues facing rural communities and American consumers including global food security and hunger, climate change, sustainable energy, childhood obesity and food safety.

Section 724 of Title VII, General Provisions, in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs Appropriations Act, 2010 (Pub. L. 111–80) provided $4 million to the Secretary of Agriculture to award grant(s) to develop and field test new food products designed to improve the nutritional delivery of humanitarian food assistance provided through the McGovern-Dole (section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1)) and the Food for Peace title II (7 U.S.C. 1691 *et seq.*) programs.

Senate Report 111–39, which accompanies Pub. L. 111–80, states in Title I, Agricultural Programs, Production, Processing, and Marketing, Office of the Secretary:

> The Committee is aware of significant advances in food science and technology that should be utilized to cost-effectively improve products beneficial for use in food assistance programs and the Secretary is directed, acting through the Undersecretary for Research, Education, and Economics, to carry out a grants program to better incorporate those and other advances as part of McGovern-Dole and Food for Peace title II programs. The report continues, that the Secretary is encouraged, through the authorities of the Research, Education, and Economics mission area, to conduct assessments of methods and tools used by non-governmental organizations and international agencies to assess nutritional gaps among populations served by U.S. humanitarian food assistance programs with recommendations on how to improve such programs in the field at the lowest possible cost. The Secretary should also undertake an assessment on the most cost-effective technologies for the purification and supply of safe water which could be implemented in the field to benefit these highly vulnerable populations and to make recommendations on the most cost-effective and commercially available systems that require priority research assistance.

Invitation To Comment

As one step in conducting the assessments on Improving Food Aid and Providing Safe Water, NIFA is soliciting input from interested stakeholders on the following questions. Comments received will be considered as the assessment reports are developed. NIFA will not endorse particular products or approaches, and will focus its assessments on the steps that are needed for improving existing methods and technologies, or for developing new methods and technologies.

Respondents may address as many of the following questions as they wish.

Assessing Nutritional Gaps

1. What methods and tools do non-governmental organizations and international agencies use to assess nutritional gaps in populations that are served by U.S. international food aid programs?

2. What are the strengths and weaknesses of those methods and tools?

3. How could such methods and tools be made more reliable, informative and cost-effective?

4. What additional laboratory or field-based research and development is needed to improve such methods and tools?

5. What innovations and/or studies could lead to significant future improvements in such methods and tools?

Assessing Safe Water Technologies

1. What are the most effective and cost-efficient, commercially available water purification and supply technologies for serving the safe water needs of vulnerable populations in developing countries?

2. What are the strengths and weaknesses of currently available water purification and supply technologies?

3. What improvements are needed to make currently available water purification and supply technologies more reliable and cost effective?

4. What additional laboratory or field-based research and development is needed to improve such technologies?

5. What significant innovations in water purification and supply technologies are underway?

Done at Washington, DC, on July 29, 2010.

Roger N. Beachy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2010–19132 Filed 8–3–10; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO).

Form Number(s): None.

Agency Approval Number: 0651–0017.

Type of Request: Extension of a currently approved collection.

Burden: 12,330 hours annually.

Number of Respondents: 635 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public between 2 and 40 hours, depending upon the complexity of the situation, to gather the necessary information, prepare, and submit the requirements in this collection.

Needs and Uses: This information is required by 35 U.S.C. 2, 32 and 33 and administered by the USPTO through 37 CFR 10.20–10.112 and 37 CFR 11.19–11.61. The information is used by the Director of the Office of Enrollment and Discipline (OED) to investigate and, where appropriate, prosecute for violations of the USPTO Code of Professional Responsibility. Registered practitioners are mandated to maintain proper documentation so that they can fully cooperate with an investigation in the event of a report of an alleged violation. There are no forms associated with this collection of information.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A_Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0017 copy request" in the subject line of the message.

• *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before September 3, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A_Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–19103 Filed 8–3–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–951]

Certain Woven Electric Blankets from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value

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

EFFECTIVE DATE: August 4, 2010.

FOR FURTHER INFORMATION CONTACT: Drew Jackson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4406.

SUPPLEMENTARY INFORMATION:

Amendment to the Final Determination:

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, ("the Act"), on July 2, 2010, the Department of Commerce ("Department") published the final determination of sales at less than fair value ("LTFV") in the antidumping investigation of certain woven electric blankets ("woven electric blankets") from the People's Republic of China ("PRC"). *See Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) ("*Final Determination*").

On July 6, 2010, Jarden Consumer Solutions ("Petitioner") filed a timely allegation that the Department made various ministerial errors in the *Final Determination* and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the calculation of the margins for respondent, Hung Kuo Electronics (Shenzhen) Company Limited ("Hung Kuo"). No other parties in this proceeding submitted comments on the Department's final margin calculations or replies to Petitioner's submission.

A ministerial error is defined as an error "in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Department considers ministerial." *See* section 735(e) of the Act; *see also* 19 CFR 351.224(f).

After analyzing Petitioner's comments, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made certain inadvertent ministerial errors in our calculations for the final determination with respect to Hung Kuo. For a detailed discussion of these ministerial errors, as well as the Department's analysis of these errors, *see* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Antidumping Duty Investigation of Certain Woven Electric Blankets from the People's Republic of China: Analysis of Ministerial Error Allegations," dated July 28, 2010.

Additionally, in the *Final Determination*, we determined that Ningbo V.K. Industry & Trading Co., Ltd., and Ningbo Jifa Electrical Appliances Co., Ltd./Ningbo Jinchun Electric Appliances Co., Ltd. had demonstrated their eligibility to receive a separate rate. *See* Final Determination, 75 FR 38459–38461. In the *Final Determination*, we assigned Ningbo V.K. Industry & Trading Co., Ltd., and Ningbo Jifa Electrical Appliances Co., Ltd./Ningbo Jinchun Electric Appliances Co., Ltd. the dumping rate calculated for Hung Kuo. For this amended final determination, we have assigned these companies Hung Kuo's recalculated dumping rate.

We have made no changes to the margin selected for the PRC–wide entity.

Therefore, in accordance with section 735(e) of the Act, we are amending the final determination of sales at LTFV in the antidumping duty investigation of woven electric blankets from the PRC. After correcting these ministerial errors, the revised final weighted–average dumping margins are as follows:

Amended Final Determination Margins

We determine that the following weighted–average dumping margins exist for the period October 1, 2008, through March 31, 2009:

Exporter & Producer	Weighted–Average Margin
Hung Kuo Electronics (Shenzhen) Company Limited ..... Produced by: Hung Kuo Electronics (Shenzhen) Company Limited.	93.09 %
Ningbo V.K. Industry & Trading Co., Ltd. ..... Produced by: Ningbo V.K. Industry & Trading Co., Ltd..	93.09%
Ningbo Jifa Electrical Appliances Co., Ltd. or Ningbo Jinchun Electric Appliances Co., Ltd. .... Produced by: Ningbo Jifa Electrical Appliances Co., Ltd. or Ningbo Jinchun Electric Appliances Co., Ltd..	93.09%
PRC–Wide Rate	174.85%

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation of all entries of woven electric blankets from the PRC, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after, February 3, 2010, the date of publication of the *Preliminary Determination* in the **Federal Register**. *See Certain Woven Electric Blankets From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 5567 (February 3, 2010) ("*Preliminary Determination*"). The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the

chart above will be the rate the Department has determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide entity rate; and (3) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. These suspension–of-liquidation instructions will remain in effect until further notice.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: July 28, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–19137 Filed 8–3–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before August 24, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–038. Applicant: Emory University, 1599 Clifton Rd., Atlanta, GA 30322. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument will be used for the fine structural examination of biological and soft/hard materials specimens. Justification for Duty–Free Entry: There are no instruments of the same general category being manufactured in the United States. Application accepted by Commissioner of Customs: July 13, 2010.

Docket Number: 10–049. Applicant: Health Research, Inc., New York State Department of Health, Wadsworth Center, Riverview Center 150 Broadway, Suite 560 Menands, NY 12204–2719. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: This instrument will be used to study biological material including cells and tissues of any and all types. The This instrument allows specific proteins to be visualized in the context of overall cellular architecture. It also has the resolution needed to image the macromolecule directly and to determine the shape, and even the quasi–atomic structure of the macromolecule. Justification for Duty–Free Entry: There are no instruments of the same general category being manufactured in the United States. Application accepted by Commissioner of Customs: July 13, 2010.

Docket Number: 10–051. Applicant: Regents of the University of California at San Diego, 9500 Gilman Drive, MC 0651 GPL Building, Room H204, La Jolla, CA 92093–0651. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: This instrument will be used to study ultrathin (70 nm) sections of fixed and frozen and/or fixed and plastic–embedded mammalian tissues and cultured cells, bacteria, viruses, fish and nanoparticles. The instrument will be used to look at samples and specimens that are mounted on EM (electron microscope) grids, using negative staining, plastic embedding and ultrathin sectioning of fixed tissues or cells, and immunolabeling of ultrathin cryosections of frozen fixed tissues or cells. Justification for Duty–Free Entry: There are no instruments of the same general category being manufactured in the United States. Application accepted by Commissioner of Customs: July 14, 2010.

Dated: July 28, 2010.

Gregory W. Campbell,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–19185 Filed 8–3–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW72

Draft 2010 Marine Mammal Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS reviewed the Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act. SARs for marine mammals in the Alaska, Atlantic, and Pacific regions were revised according to new information. NMFS solicits public comments on draft 2010 SARs.

DATES: Comments must be received by November 2, 2010.

ADDRESSES: The 2010 draft SARs, summaries of them, and references cited in this notice are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/sars/*.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070.

Copies of the Atlantic and Gulf of Mexico Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments. Comments may also be sent via facsimile (fax) to 301–427–2522 or via email to *mmsar.2010@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, e-mail *Tom.Eagle@noaa.gov*; Robyn Angliss 206- 526–4032, e-mail *Robyn.Angliss@noaa.gov*, regarding Alaska regional stock assessments; Gordon Waring, 508–495–2311, e-mail *Gordon.Waring@noaa.gov*, regarding Atlantic regional stock assessments; or Jim Carretta, 858–546–7171, e-mail *Jim.Carretta@noaa.gov*, regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters

under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in the Alaska, Atlantic, and Pacific regions to incorporate new information. NMFS solicits public comments on the draft 2010 SARs.

Alaska Reports

In the Alaska region, SARs for 23 stocks (14 strategic and 9 non-strategic) were updated; 13 SARs were not updated. Most revisions included updates of abundance and/or mortality estimates. None of the updates resulted in change of status of a stock. Estimates of mortality and serious injury incidental to observed Federally-managed fisheries remain based on information obtained during the period, 2002–2006. Preliminary results from 2007 and 2008 are discussed in the section related to fishery mortality; however, these preliminary estimates have not yet been fully reviewed and are not combined with the previous estimates to obtain a new 5–year average.

After receiving increasing reports of sightings of narwhal in waters under U.S. jurisdiction, a new SAR for narwhal has been added in the Alaska region. Narwhals observed in Alaskan waters likely belong to populations outside U.S. waters, and the stock of origin is unknown. Therefore, the SAR is for an unidentified stock of narwhal.

As recommended by the Alaska SRG, the draft 2010 SAR for Cook Inlet beluga whales alters the way that abundance and the minimum estimate of abundance (Nmin) are reported. The abundance reported in the 2010 draft SAR is the mean of estimates from 2007 (375), 2008 (375), and 2009 (321) and is 375. Nmin, which is a function of the abundance estimate and the coefficient of variation (CV) of that estimate, is 326. Nmin is used within the SAR only for calculating PBR, which remains undetermined for this stock.

A new abundance estimate for the 2006/2007 survey is reported in the eastern North Pacific gray whale SAR. After realizing that early estimates of abundance of this stock were calculated from models using different parameters, NMFS scientists re-analyzed the entire history of abundance estimates for this stock using consistent methods (Laake et al. 2009). Punt and Wade (2009) used the new abundance estimates to evaluate the status and trend of the stock. These new analyses are included in the SAR and reaffirm that the stock remains within its Optimum Sustainable Population limits.

NMFS scientists also considered guidance included in Taylor et al. (2003) to evaluate the potential to adjust recovery factors for stocks of endangered marine mammals in Alaska. This evaluation noted that for the central North Pacific (CNP) stock of humpback whales, Nmin exceeded 5,000 and the trend was increasing. For endangered stocks with such abundance and trend that have a CV of 0.5 or less, Taylor et al. (2003) suggest a recovery factor of 0.5; however, the CV reported in the CNP humpback whale SAR (0.3) is an assumed value. Accordingly, the recovery factor was increased from 0.1 to 0.3, which is the value recommended for those cases when CV of the abundance estimate is larger than 0.5. As has been reported in previous CNP humpback SARs, the PBR is reported for the entire stock as well as for feeding aggregations in AK, two of which retain 0.1 as the recovery factor in the PBR calculation.

Atlantic Reports

The draft 2010 SARs for 17 Atlantic Stocks were updated (9 strategic and 8 non-strategic) and 4 Gulf of Mexico stocks (2 strategic and 2 non-strategic). The updates included revised abundance and/or mortality estimates for these stocks, and one update resulted in a modified status of a stock (long-fined pilot whale).

In a SAR prepared in 2008 seven stocks of Atlantic coastal bottlenose dolphins were grouped into a single report. For the draft 2010 SARs, each stock of coastal bottlenose dolphins is presented in a separate report. Stock structure was revised due to additional information into five stocks of coastal bottlenose dolphins in the Atlantic Ocean: Northern Migratory stock, Southern Migratory stock, South Carolina/Georgia Coastal stock, Northern Florida Coastal stock, and Central Florida Coastal stock. All of these stocks are strategic due to their origins of the previously identified, depleted coastal migratory stock.

Three stocks of coastal bottlenose dolphins had been included in a single SAR for Northern Gulf of Mexico Coastal stocks in 2007–2009. These stocks are each described in a separate report in 2010, and are identified as the Gulf of Mexico Eastern Coastal stock, Gulf of Mexico Northern Coastal stock, and Gulf of Mexico Western Coastal stock. From 2007–2009, each of these stocks was considered a strategic stock because the abundance estimate was outdated, PBR was undetermined, and human-caused mortality was occurring. Aerial surveys conducted in 2007 provided abundance estimates for the Eastern and Northern Coastal stocks, which in turn led to the status becoming non-strategic. The Western Coastal stock was not surveyed in 2007. PBR remains undetermined, and status remains strategic.

Among the Gulf of Mexico, Bay, Sound, and Estuary stocks of bottlenose dolphins, two previously separated stocks were combined into a single stock (Sarasota Bay/Little Sarasota Bay). Accordingly, this SAR describes the status of 32, rather than 33, stocks of bottlenose dolphins. The abundance estimate of one of these stocks (Barataria Bay) became outdated, and that stock's PBR was changed to undetermined.

Analysis of the geographical separation in summer of long and short-finned pilot whale stocks in the Atlantic has been completed, and preliminary abundance estimates for the two stocks are included in the revised pilot whale reports. Similar analyses have not been completed for mortality and serious injury estimates; therefore, each of these SARs reports the combined mortality and serious injury estimate. The short-finned pilot whale stock remains non-strategic, but the status of the long-finned pilot whale stock is now considered strategic.

A new SAR is included for a Puerto Rico and Virgin Islands stock of sperm whales in the Caribbean Sea. The abundance estimate for the Western North Atlantic stock of harbor seals became outdated in 2010, and PBR for the stock was changed to undetermined. The harbor seal stock remains non-strategic.

Pacific Reports

In the Pacific region, SARs were revised for 51 stocks, and 12 SARs were added for a total of 63 draft 2010 SARs, including 12 "strategic" stocks, 48 "non-strategic" stocks, and three stocks of unknown status. The remaining 12 Pacific region stocks were not revised.

General updates are as follows. Abundance estimates were updated for 41 stocks, and these updates did not change the status of most stocks. The new abundance for short-finned pilot whales increased the PBR so that the status of this stock was changed from strategic to non-strategic. Information updates for longline fisheries in the Pacific Islands region are also included in a fishery description appendix. Where available, information on subspecies designations has been included in these reports to reflect local taxonomic and conservation issues (Perrin *et al.* 2009).

The former Hawaii stock of spinner dolphin was renamed as the Hawaii pelagic stock, and five new near-shore stocks of spinner dolphins were identified in the Hawaiian Exclusive Economic Zone (EEZ). These new spinner dolphin stocks are the Hawaii (Island) stock, Oahu, Four Islands (Maui, Molokai, Lanai, and Kahoolawe) stock, Niihau stock, Kure-Midway stock, and the Pearl and Hermes stock.

The SAR for the Hawaii stock of bottlenose dolphin was renamed the Hawaii pelagic stock, and four new near-shore stocks were identified. The new bottlenose dolphin stocks are the Kauai-Niihau stock, Oahu stock, Four Islands stock, and the Hawaii (Island) stock.

Three new reports are added for dolphin stocks incidentally taken in longline fisheries or identified during nearshore surveys around American Samoa. American Samoa stocks are added for spinner dolphins, false killer whales, and rough-tooth dolphins. Estimates of mortality and serious injury are provided for false killer whales and rough-toothed dolphins, but there are no abundance estimates for the new American Samoa stocks. Accordingly, the status of each of the three new American Samoa stocks is unknown.

There is a substantial revision of the SAR for the Pacific Islands Stock Complex of false killer whales. Key revisions include stock identity and range, a newly recognized fishery, proration of incidental mortality and serious injury among stocks and fisheries, and abundance estimates for animals south of the U.S. EEZ around Hawaii. Revisions related to stock identity and geographic range include evidence that there is overlap in the ranges of the HI insular and pelagic stocks, both of which are exposed to commercial fishing operations of the Hawaii-based longline fisheries. The identity of the pelagic stock was revised to clarify that the stock occupies international waters as well as the U.S. EEZ around Hawaii; however, the geographic limits of the stock's range are unknown. The SAR also describes a new commercial fishery, the HI shortline fishery, for which there are anecdotal reports of interactions with false killer whales. Mortality and serious injury of false killer whales incidental to longline fishing are allocated among false killer whale stocks and fisheries by a statistical algorithm, as recommended by the Pacific SRG. The revised SAR also includes an abundance estimate (and PBR) calculated from a 2005 survey south of the HI EEZ, including international waters and the U.S. EEZ surrounding Johnston Atoll.

Dated: July 29, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–19143 Filed 8–3–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Changed Circumstances Review

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

SUMMARY: On June 8, 2010, the Department of Commerce ("the Department") published a notice of preliminary results of a changed circumstances review of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC").[1] In the *Preliminary Results,* the Department preliminarily found that Mai Shandong Radial Tyre Co., Ltd. ("Mai Shandong") is not the successor-in-interest to Shandong Jinyu Tyre Co., Ltd. ("Shandong Jinyu") for the purposes of determining the antidumping duty cash deposit rate for Mai Shandong. For the final results, the Department continues to find that Mai Shandong is not the successor-in-interest to Shandong Jinyu.

DATES: *Effective Date:* August 4, 2010.

FOR FURTHER INFORMATION CONTACT: Raquel Silva or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6475 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2008, the Department published in the **Federal Register** an antidumping duty order on OTR tires from the PRC.[2] As part of the *Order,* Shandong Jinyu received the amended separate-rate respondent rate of 12.91 percent.[3] On September 14, 2009, Mai Shandong filed a submission requesting that the Department conduct a changed circumstances review of the *Order* to confirm that it is the successor-in-interest to Shandong Jinyu.[4] As part of its September 14, 2009, submission, Mai Shandong requested that the Department conduct an expedited review.

In response to the request, the Department initiated a changed circumstances review of Mai Shandong on November 10, 2009.[5] However, the Department found conclusive evidence lacking and, therefore, determined an expedited preliminary result was not appropriate.[6] Subsequent to initiation, the Department issued, and Mai Shandong responded to, an original and several supplemental questionnaires requesting additional information.

On June 8, 2010, the Department published preliminary results of the changed circumstances review, finding Mai Shandong not to be the successor-in-interest to Shandong Jinyu, and invited interested parties to comment.[7] We received no comments or requests for a hearing from interested parties.

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural

[1] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Changed Circumstances Review,* 75 FR 32376 (June 8, 2010) ("*Preliminary Results*").

[2] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008) ("*Order*").

[3] *See Id.* at 51627.

[4] *See* Letter from Mai Shandong to the Department regarding *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, Request for Changed Circumstances Review* (Case No. A–570–912) (September 14, 2009).

[5] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation of Changed Circumstances Review,* 74 FR 57999 (November 10, 2009).

[6] *See Id.* at 58001.

[7] *See Preliminary Results.*

fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[8] combine harvesters,[9] agricultural high clearance sprayers,[10] industrial tractors,[11] log-skidders,[12] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders; [13] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[14] front end loaders,[15] dozers,[16] lift trucks, straddle carriers,[17] graders,[18] mobile cranes,[19] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[20] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.,* tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type [21] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix Letter Designations

- P—Identifies a tire intended primarily for service on passenger cars;
- LT—Identifies a tire intended primarily for service on light trucks; and,
- ST—Identifies a special tire for trailers in highway service.

Suffix Letter Designations

- TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156" or plus 0.250";
- MH—Identifies tires for Mobile Homes;
- HC—Identifies a heavy duty tire designated for use on "HC" 15" tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- *Example:* 8R17.5 LT, 8R17.5 HC
- LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Final Results of the Review

In the *Preliminary Results,* the Department found that Mai International's acquisition of approximately 90 percent equity in Shandong Jinyu's OTR tires business resulted in a joint venture that is majority owned and operated by a new, foreign entity, with a new corporate structure, changed management, and significantly altered sales and marketing

[8] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[9] Combine harvesters are used to harvest crops such as corn or wheat.

[10] Agricultural sprayers are used to irrigate agricultural fields.

[11] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[12] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[13] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[14] Haul trucks, which may be either rigid frame or articulated (*i.e.,* able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[15] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[16] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.,* typically around construction sites. They can also be used to perform "rough grading" in road construction.

[17] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[18] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

[19] *I.e.,* "on-site" mobile cranes designed for off-highway use.

[20] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

[21] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (e.g., sold with or separately from subject merchandise).

operations.[22] As a result, the Department preliminarily determined that Mai Shandong is a new entity that operates in a significantly different manner from Shandong Jinyu. The Department did not receive any comments on the preliminary results of this review. For the same reasons stated in the preliminary results, the Department continues to find that Mai Shandong is not the successor-in-interest to Shandong Jinyu for the purposes of the antidumping duty proceeding.[23] Accordingly, Mai Shandong remains subject to the PRC-wide entity rate.

Notification

The Department will instruct U.S. Customs and Border Protection that the determination from this changed circumstances review will apply to all shipments of the subject merchandise produced and exported by Mai Shandong entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review in which Mai Shandong participates.

This notice also serves as a final reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: July 28, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–19196 Filed 8–3–10; 8:45 am]

BILLING CODE 3510–DS–P

[22] *See Preliminary Results,* 75 FR at 32377–78.

[23] *See Id.*

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Proposal for Minor Adjustments to Optional Alternative Site Framework

The Foreign-Trade Zones (FTZ) Board is inviting public comment on a staff proposal to make minor adjustments to the Board's practice regarding the alternative site framework (ASF) adopted by the Board in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for grantees to designate and manage their general-purpose FTZ sites. The proposed adjustments focus on eliminating the current requirement for "activation limits" on a site-specific basis and on allowing more flexibility regarding letters from jurisdictions within a grantee's proposed "service area."

The first modification now proposed for the ASF is to eliminate the current requirement that each site of a participating zone be assigned a specific limit on the amount of space that can be activated with U.S. Customs and Border protection at that site. The original intent of site-specific activation limits was to help ensure compliance with the overall 2,000-acre activation limit for each general-purpose zone project. However, feedback from grantees indicates that the site-specific activation limits are cumbersome in practice. This is particularly true because a grantee could face the burden of requesting changes to site-specific activation limits based on unforeseen circumstances in the future.

In the period since the adoption of the ASF proposal, the FTZ Board staff has been developing a system (the Online FTZ Information System—OFIS) to make available via the internet a range of information about every FTZ site. OFIS will include user accounts for grantees so that a grantee will be able to update the information regarding the amount of space activated at its sites as new activations (or deactivations) occur. Given that the OFIS functionality to display FTZ site information on the internet should be available for general use within a few months, the Board staff is now proposing that the tracking of activated acreage via OFIS be adopted as a substitute for the site-specific activation limits. For any zone already approved under the ASF or with a pending application, the site-specific activation limits contained in the grantee's application to reorganize under the ASF would simply no longer apply (with only the standard 2,000-acre activation limit for each general-purpose zone continuing to govern overall activation within the zone).

The second modification proposed by the FTZ Board staff is to allow more flexibility regarding application requirements for letters from jurisdictions (ordinarily counties) within the proposed service area. The Board staff recognizes the challenge that certain grantees have faced in obtaining "support" letters from jurisdictions, particularly given the standard language for such letters initially developed by the staff as part of the implementation of the ASF. As a result, the Board staff proposes to allow the submission in ASF reorganization applications of letters from the jurisdictions which simply (1) acknowledge that the appropriate official(s) of the jurisdiction is aware of the proposal to include the jurisdiction in the service area of the zone in question and (2) present any views of the official(s) of the jurisdiction on the proposal. This proposed modification also recognizes that the regulatory standard (15 CFR 400.23(a)) applicable to the review of such applications includes a range of criteria, one of which is the "views of State and local public officials."

Public comment on these proposed adjustments to the FTZ Board's practice regarding the ASF is invited from interested parties. We ask that parties submit their comments electronically to *ftz@trade.gov* or fax a copy of their comments, addressed to the Board's Executive Secretary, to (202) 482–0002. We also ask that parties submit the original of their comments to the Board's Executive Secretary at the following address: U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for the receipt of public comments is September 3, 2010. Any questions about this request for comments may be directed to the FTZ Board staff at (202) 482–2862.

Dated: July 30, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–19139 Filed 8–3–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–912)

New Pneumatic Off–the-Road Tires from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: August 4, 2010.

FOR FURTHER INFORMATION CONTACT: Andrea Staebler Berton or Raquel Silva, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–6475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2009, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on new pneumatic off–the-road tires ("OTR tires") from the People's Republic of China ("PRC") for the period of review ("POR") February 20, 2008, through August 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 74 FR 45179 (September 1, 2009). On September 29, 2009, Qingdao Free Trade Zone Full World International Trading Co., Ltd. ("Full–World"), exporter of OTR tires, requested that the Department conduct an administrative review of its exports to the United States during the POR. The Department received timely requests for review for fourteen additional exporters: Aeolus Tyre Co., Ltd. ("Aeolus"); Guizhou Tire I&E Corporation, Guizhou Tyre Co., Ltd., and Guizhou Advanced Rubber Co., Ltd. (collectively "GTC"); Hanghzou Zhongce Rubber Co., Ltd.; Hebei Starbright Tire Co., Ltd. ("Starbright"); Innova Rubber Co., Ltd. ("Innova"); Jiangsu Feichi Co., Ltd. ("Feichi"); KS Holding Limited and KS Resources Limited (collectively "KS Ltd."); Laizhou Xiongying Rubber Industry Co., Ltd.; Qingdao Taifa Group Co., Ltd.; Shangdong Huitong Tyre Co., Ltd. ("Huitong"); Triangle Tyre Co., Ltd. ("Triangle"); Tianjin Wanda Tyre Group ("Wanda"); Tianjin United Tire &Rubber International Co., Ltd. ("TUTRIC"); and Weihai Zhongwei Rubber Co., Ltd. The Department then published in the **Federal Register** the initiation notice for the antidumping duty administrative review of OTR tires from the PRC for the 2008 –2009 POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part*, 74 FR 54956 (October 26, 2009).

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Secretary may also extend this time limit if the Secretary decides that it is reasonable to do so. On May 21, 2010, the Department rescinded the administrative reviews of OTR tires with respect to GTC's, TUTRIC's, Feichi's, Huitong's, Aeolus', Triangle's, Wanda's, and Innova's exports. *See New Pneumatic Off–the-Road Tires From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 28567 (May 21, 2010). On May 26, 2010, Full–World withdrew its request for an administrative review of its exports. In spite of the fact that Full–World missed the 90-day deadline, we are extending the time limit and accepting the request because the Department has not invested significant resources into the analysis of Full–World's responses. In fact, Full–World had not submitted any questionnaire responses prior to its request to rescind the review with respect to its exports. Because no additional party requested a review of Full–World's exports, the Department hereby rescinds the administrative review of OTR tires with respect to this entity in accordance with 19 CFR 351.213(d)(1). This administrative review will continue with respect to Starbright, Hanghzou Zhongce Rubber Co., Ltd., KS Ltd., Laizhou Xiongying Rubber Industry Co., Ltd., Qingdao Taifa Group Co., Ltd. and Weihai Zhongwei Rubber Co., Ltd.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For Full–World, which had previously established eligibility for a separate rate, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 23, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–19191 Filed 8–3–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Foreign–Trade Zone 153 - San Diego, California, Site Renumbering Notice

Foreign–Trade Zone 153 was approved by the Foreign–Trade Zones Board on October 14, 1988 (Board Order 394, 53 FR 41616, 10/24/88) and expanded on December 16, 1991 (Board Order 548, 56 FR 67057, 12/27/91) and on August 23, 2002 (Board Order 1245, 67 FR 56983, 09/06/02).

FTZ 153 currently consists of 10 "Sites" totaling 1,651 acres in the San Diego, California area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering of existing Site 5A and Site 6A for record–keeping purposes.

Under this revision, the site list for FTZ 153 will be as follows: *Site 1* (316 acres) -- Brown Field, located at Otay Mesa and Heritage Roads; *Site 2* (73 acres) -- San Diego Business Park, located at Airway Road and State Route 125; *Site 3* (60 acres) -- Gateway Park, located at Harvest and Customs House Plaza Roads; *Site 4* (71 acres) -- Britannia Commerce Center, located at Siempre Viva Road and Britannia Boulevard; *Site 5* (312 acres) -- De La Fuente Business Park, located at Airway and Media Roads; *Site 6* (160 acres) --

Brown Field Business Park, located at Otay Mesa Road and Britannia Boulevard; *Site 7* (389 acres) -- Otay International Center, located at Harvest and Airway Roads; *Site 8* (86 acres) -- Ocean View Hills Corporate Center, located at Otay Mesa Road and Innovative Drive; *Site 9* (119 acres) -- Siempre Viva Business Park, located along La Media and Siempre Viva Roads; and, *Site 10* (65 acres) -- Brown Field Technology Park, located across Otay Mesa Road from Brown Field.

For further information, contact Christopher Kemp at (202) 482–0862 or *Christopher.Kemp@trade.gov.*

Dated: July 29, 2010.

Andrew Mcgilvray,

Executive Secretary.

[FR Doc. 2010–19138 Filed 8–3–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice; correction.

SUMMARY: The National Assessment Governing Board published a document in the **Federal Register** of July 26, 2010, announcing the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. The meeting agenda has been revised to reflect the addition of another full Board closed session on Friday, August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu at (202) 357–6906.

Correction

In the **Federal Register** of July 26, 2010, FR Doc. 2010–18204 filed on July 23, 2010, Volume 75, Number 142, pages 43515–43517, the Board published a notice of its open and closed meetings scheduled on August 5–7, 2010. The notice is hereby amended to include a second closed session meeting on Friday, August 6, 2010 at the conclusion of the full Board meeting, from approximately 4:15 p.m. to 4:30 p.m. The purpose of this closed session is to review and take action on the slate of finalists for submission to Secretary Duncan for the Board's open category of Business Representative. The vacancy in this category has just been announced, and due to the fact that a replacement is needed prior to October 1, 2010 when new Board member terms commence, the Board needs to act on the slate of nominees at the August 7, 2010 meeting. Therefore this notice is being published in the **Federal Register** less than 15 days before the meeting due to the recent vacancy announcement and the need to fill this position prior to October 1, 2010.

The Board discussions on candidates for vacant Board positions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 29, 2010.

Cornelia S. Orr,

Executive Director, U.S. Department of Education, National Assessment Governing Board.

[FR Doc. 2010–19107 Filed 8–3–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2484–016]

Gresham Municipal Utilities; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 28, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Accelerate License Expiration Date.

b. *Project No:* 2484–016.

c. *Date Filed:* June 10, 2010.

d. *Applicant:* Gresham Municipal Utilities.

e. *Name of Project:* Upper Red Lake Dam Hydroelectric Project.

f. *Location:* On the Red River, in Shawano County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Art Bahr, Village Administrator/Utility Manager, Village of Gresham, 1126 Main Street, P.O. Box 50, Gresham, WI 54128, (715) 787–3994; and Arie DeWaal, Senior Project Manager, Mead & Hunt, Inc., 6501 Watts Road, Madison, WI 53719, (608) 273–6380.

i. *FERC Contact:* Jake Tung, (202) 502–8757, and e-mail: *hong.tung@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* August 30, 2010. Comments, motions to intervene, and protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

k. *Description of Request:* The licensee proposes to amend the license for the Upper Red Lake Dam Hydroelectric Project to accelerate the expiration date of the license. The current expiration date of the license is December 31, 2018. The licensee requests the Commission to issue an order accelerating the expiration date of the license to not less than 5 years and 90 days from the date of the Commission order. The reasons for the request follow: (1) The licensee also operates the Weed Dam Hydroelectric Project (FERC Project No. 2464), which is located immediately downstream from the Upper Red Lake Dam Project; (2) the current license for the Weed Dam Project expires June 30, 2015, and the licensee will file a subsequent license application no later than June 30, 2013; and (3) the licensee would like to combine the relicensing activities since the two projects are small in size, approximate in location, and only three and one-half years apart in license expiration date, which would result in substantial savings to the licensee and more effective consultation with resources agencies and other stakeholders.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–2484) excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filling and Service of Responsive Documents—All filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have—no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–19087 Filed 8–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC10–142–000]

MidAmerican Energy Company; Notice of Filing

July 28, 2010.

Take notice that on July 16, 2010, MidAmerican Energy Company (MidAmerican) submitted a filing requesting approval of proposed journal entries required to reclassify high voltage assets and accumulated depreciation, from distribution plant accounts to transmission plant accounts.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail F*ERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 17, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–19086 Filed 8–3–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0565; FRL–8835–1]

Nominations to the FIFRA Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel (SAP) established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Panel was created on November 28, 1975, and made a statutory Panel by amendment to FIFRA, dated October 25, 1988. The Agency, at this time, anticipates selecting two new members to serve on the panel as a result of membership terms that will expire this year. Public comment on the nominations is invited, as these comments will be used to assist the Agency in selecting the new chartered Panel members.

DATES: Comments, identified by docket ID number EPA–HQ–OPP–2010–0565, must be received on or before September 3, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0565, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2010–0565. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION**

CONTACT to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2045; fax number: (202) 564–8382; e-mail address: *bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. Background

The FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee, established in 1975 under FIFRA, that operates in accordance with requirements of the Federal Advisory Committee Act (FACA). In accordance with the statute, the FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP. As a peer review mechanism, the FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency. The statute further stipulates that the Agency publish the name, address and professional affiliation in the **Federal Register**.

The Agency, at this time, anticipates selecting two new members to serve on the panel as a result of membership terms that will expire this year. The Agency requested nominations of experts to be selected from the field of environmental risk assessment with experience and expertise in all phases of the risk assessment process including: Planning, scoping, and problem formulation, analysis, and interpretation and risk characterization (including the interpretation and communication of uncertainty). Nominees should be well published and current in their field of expertise.

III. Charter

A Charter for the FIFRA Scientific Advisory Panel dated October 24, 2008, was issued in accordance with the requirements of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770 (5 U.S.C. App. I).

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact of pesticides on health and the environment. No persons shall be ineligible to serve on the Panel by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or

agency (except EPA). The Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Administrator, before being formally appointed, is required to submit a confidential statement of employment and financial interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d)(1) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, educational background, employment history, and scientific publications.

B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) of FIFRA that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to Special Government Employees, which include advisory committee members, will apply to the members of the Scientific Advisory Panel. These regulations appear in 40 CFR part 3, subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d) of FIFRA, EPA, on March 11, 2010, requested that the National Institutes of Health (NIH) and the National Science Foundation (NSF) nominate scientists to fill vacancies occurring on the Panel. The Agency requested nominations of experts in the field of environmental risk assessment with experience and expertise in all phases of the risk assessment process. NIH and NSF responded by letter, providing the Agency with a total of 16 nominees. Eight of the 16 nominees are interested and available to actively participate in SAP meetings (see Unit IV. Nominees). The following eight nominees are not available:

1. Elizabeth Kelly, Ph.D., Los Alamos National Laboratory, Los Alamos, NM.
2. Riana Maier, Ph.D., Department of Soil, Water and Environmental Science, University of Arizona, Tucson, AZ.
3. Ronald Melnick, Ph.D., National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, NC.
4. Eva Oberdorster, Ph.D., Department of Biological Sciences, Southern Methodist University, Dallas, TX.
5. Walter Piegorsch, Ph.D., Department of Mathematics, University of Arizona, Tucson, AZ.
6. Jim Riviere, Ph.D., Department of Population Health and Pathobiology, North Carolina State University, Raleigh, NC.
7. Theodore Slotkin, Ph.D., Department of Pharmacology and Cancer Biology, Duke University, Durham, NC.
8. Nigel Walker, Ph.D., National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, NC.

IV. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data of nominees being considered for membership on the FIFRA Scientific Advisory Panel. The Agency anticipates selecting two of the nominees to fill vacancies occurring this year.

1. Lawrence Barnthouse, Ph.D., President and Principle Scientist, LWB Environmental Services, Inc., Hamilton, OH.

i. Expertise. Population biology, ecological risk assessment.

ii. Education. B.A. in Biology, Kenyon College; Ph.D., in Biology with area of specialty of population biology, University of Chicago.

iii. Professional experience. Dr. Barnthouse is President and Principal Scientist of LWB Environmental Services, Inc. He has more than 30 years of experience in research and assessment projects involving impacts of energy technologies in freshwater, estuarine, and marine environments. Prior to founding LWB Environmental Services in 1998, he spent 19 years as a staff scientist at the U.S. Department of Energy's (DOE) Oak Ridge National Laboratory (ORNL). At ORNL, he led or participated in dozens of environmental research and assessment projects involving development of new methods for predicting and measuring the environmental risks of energy technologies. In 1981, he became co-principal investigator on EPA's first research project on ecological risk assessment. Since that time, he has been active in the development and application of ecological risk assessment methods for EPA, other federal agencies, state agencies, and private industry. He has chaired workshops on ecological risk assessment for the National Academy of Sciences and the Society of Environmental Toxicology and Chemistry, and served on the peer review panels for the Framework for Ecological Risk Assessment and the Guidelines for Ecological Risk Assessment. He continues to support the development of improved methods for ecological risk assessment as the Hazard/Risk Assessment Editor of Environmental Toxicology and Chemistry and Associate Editor of Integrated Environmental Assessment and Management.

2. Deborah Cory-Slechta, Ph.D., Professor, Environmental Medicine and Pediatrics, University of Rochester Medical School, Rochester, NY.

i. Expertise. Neurotoxicology.

ii. Education. B.S. in Psychology and M.A. in Experimental Psychology, Western Michigan University; Ph.D. in Experimental Psychology, University of Minnesota.

iii. Professional experience. Dr. Cory-Slechta became a faculty member at the University of Rochester Medical School (URMC) in 1982. She became Chair of its Department of Environmental Medicine and Director of the NIEHS Environmental Health Sciences Center in 1998, and served as Dean for Research from 2000–2002. She then became Director of the Environmental and Occupational Health Sciences Institute (EOHSI) and Chair of the Department of Environmental and Community Medicine at the University of Medicine and Dentistry of New Jersey-Robert Wood Johnson Medical School from 2003–2007, before returning to URMC as Professor in Environmental Medicine and Pediatrics. Dr. Cory-Slechta has served on national review and advisory panels of the National Institutes of Health, the National Institute of Environmental Health Sciences, the Food and Drug Administration, the National Center for Toxicological Research, the Environmental Protection Agency, the National Academy of Sciences, the Institute of Medicine, and the Agency for Toxic Substances and Disease Registry, Centers for Disease Control (CDC). She currently serves on the Science Advisory Board of EPA and on the Advisory Committee for Childhood Lead Poisoning Prevention of the CDC. In addition, Dr. Cory-Slechta has served on the editorial boards of the journals Neurotoxicology, Toxicology, Toxicological Sciences, Fundamental and Applied Toxicology, Neurotoxicology and Teratology, and American Journal of Mental Retardation. She has held the elected positions of President of the Neurotoxicology Specialty Section of the Society of Toxicology, President of the Behavioral Toxicology Society, and been named a Fellow of the American Psychological

Association. Her research has focused largely on the relationships between brain neurotransmitter systems and behavior, and how such relationships are altered by exposures to environmental toxicants, particularly the role played by environmental neurotoxicant exposures in developmental disabilities and neurodegenerative diseases. These research efforts have resulted in over 120 papers and book chapters to date.

3. Timothy Gross, Ph.D., Consultant, Environmental Resource Consultants, Gainsville, FL.

i. Expertise. Environmental resource management, wildlife biology, ecotoxicology.

ii. Education. B.S. and M.S. in Biology, Indiana University of Pennsylvania; M.A. in Historical Preservation, Savannah College of Art and Design; Ph.D. in Toxicology/Animal Sciences, University of Maryland.

iii. Professional experience. Dr. Gross is a private environmental resource consultant with over 20 years of experience and expertise in ecotoxicology. Dr. Gross was previously employed at the University of Florida from 1992 through 2007 and simultaneously with the U.S. Department of Interior (U.S. Geological Survey) from 1997–2006, providing Dr. Gross with a unique background in academia, public service and industry. Dr. Gross's research expertise has focused on the assessment of biological effects of environmental stressors across many levels of biological organization, from the biochemical and molecular levels to population and community effects. These efforts have examined the potential effects of single chemicals and complex mixtures in wildlife using both laboratory-based and field-based assessments. Efforts have evaluated effects of pesticides, wastewater, pharmaceuticals, pulp-and paper discharge and other assorted man-made and natural environmental stressors. Research projects have considered a wide array of taxonomic impacts, from planktonic and macro-invertebrate populations to fish, birds, amphibians, and reptiles. Dr. Gross's research has had broad implication and contribution to the research area of "endocrine disruption" Indeed, Dr. Gross's research efforts on Lake Apopka and similar sites nationally are among the first indicators of endocrine modulating effects of environmental contaminants in wildlife. Dr Gross has mentored many graduate students and post-docs since 1994 and continues to participate in graduate education.

4. Nominee. Mark Harwell, Ph.D., Harwell Gentile and Associates, L.C., Palm Coast, FL.

i. Expertise. Ecological risk assessment and ecosystem management.

ii. Education. B.S. in Biology, Emory University; Ph.D., in Systems Ecology from University of Miami, Institute of Marine Science.

iii. Professional experience. Dr. Harwell is an ecosystems ecologist and is currently a Partner in Harwell Gentile and Associates, L.C, following a 25–year career in academia at Cornell University, the University of Miami Rosenstiel School, and Florida A&M University. Dr. Harwell was a leader in the development of EPA ecological risk assessment framework and has led several large risk assessments, including comparative ecological risk assessments of oil spills in Tampa Bay and the Bay of Fundy; an ecological risk assessment of the effects of climate change and the South Florida ecosystem restoration on the Everglades and Biscayne Bay; an ecotoxicological risk assessment of the Coeur d'Alene River watershed; and an assessment of the current ecological significance of effects from the Exxon Valdez oil spill on Prince William Sound. He led a series of interdisciplinary studies on human interactions with the South Florida environment, including field, mesocosm, and modeling studies in Biscayne Bay and the Florida Keys National Marine Sanctuary. He coordinated interdisciplinary studies in five National Estuarine Research Reserves, developing conceptual models of coupled human environment systems, and contributing to ecological assessments using remote sensing and hyperspectral imagery. Dr. Harwell served for more than a decade as a member of the EPA Science Advisory Board (SAB), including two terms as Chair of the Ecological Processes and Effects Committee. He led the ecological risk component of the EPA Unfinished Business Project, and was a member of the EPA SAB Reducing Risk project. He chaired the U.S. Man and the Biosphere Human-Dominated Systems Directorate, and led its project on ecological sustainability, ecosystem management, and an ecosystem integrity report card framework. He led the Scientific Committee on Problems of the Environment (SCOPE) 5–year international study to assess the global environmental consequences of nuclear war (ENUWAR), with emphasis on ecological responses to climate change. He directed the PAN-EARTH Project, a series of national-level case studies on the ecological and agricultural effects of climate variability on Venezuela, India, Japan, China, and sub-Saharan Africa; he was a member of the U.S. Global Change Research Program's National Assessment working group on coastal resources effects; and he serves as an expert reviewer for the Intergovernmental Panel on Climate Change. He served on the National Academy of Sciences (NAS) panel on ecological risks in the U.S. and Poland, and was a member of the NAS panel on risk communications. Dr. Harwell also served as a member of the NAS Board on Environmental Studies and Toxicology, and was elected a Fellow of the American Association for the Advancement of Science.

5. Stephen J. Klaine, Ph.D., Professor in the Department of Biological Sciences and Director of the Institute of Environmental Toxicology (CU-ENTOX), Clemson University, Pendleton, SC.

i. Education. B.S. in Biology, University of Cincinnati; M.S. and Ph.D. in Environmental Science, Rice University.

ii. Expertise. Toxicity and risk assessment of pesticides and metals

iii. Professional experience. Dr. Klaine has spent over 25 years conducting environmental research and educating graduate students. He has 30 Ph.D. and over 40 MS graduates from his laboratory. He has served on the board of directors of the Society of Environmental Toxicology and Chemistry and has been an associate editor for the journal, Environmental Toxicology and Chemistry for 15 years. He has been on the editorial board of the journal, Nanotoxicology, since 2009. From 1995 to 2000 he was the only U.S. participant on a multi-national International Atomic Energy Agency Cooperative Research Program on Pesticides in Coastal Tropical Ecosystems. In addition to building capacity in tropical countries around the world, this group produced the first book to compile pesticide use and effects information in tropical countries of which Dr. Klaine was co-editor. He has served on several EPA Science Advisory Panels and workshops dealing with pesticide and metal fate, effects, and risk assessment. He has also served on the panel to review the National Nanotechnology Initiative Strategy on Environmental and Human Safety Needs for Nanomaterials. He has served on the National Institute of Environmental Health Sciences (NIEHS) review panel for the Superfund Basic Research Program since 1995 and chaired the panel in 2007 and 2008. He has served on several other proposal review panels for EPA, USDA, and NIEHS. He has been a Sigma Xi National

Lecturer, won the Clemson University Sigma Xi researcher of the year in 2007, and won the Clemson University Alumni Award for Outstanding Research in 2009. He has over 110 peer-reviewed publications on research ranging from the bioavailability and toxicity of pesticides and metals to pesticide risk assessment, to the environmental behavior and toxicity of nanomaterials. Current research in his laboratory focuses on characterizing: (1) The bioavailablity of metals and pesticides in aquatic systems; (2) the comparative phytotoxicity of pesticides; (3) the response of aquatic organisms to episodic contaminant exposures; (4) the water quality consequences of land use; (5) the effects of pharmaceuticals on fish behavior; and (6) the bioavailability and toxicity of colloids and nanoparticles in aquatic systems.

6. Charlene McQueen, Ph.D., ATS., W.W. Walker Professor at the Harrison School of Pharmacy, Auburn University, Auburn, AL.

i. Education. M.S. in Pharmacology and Toxicology, University of Arizona; Ph.D. in Human Genetics, University of Michigan.

ii. Expertise. Pharmacology and toxicology.

iii. Professional experience. Prior to moving to Auburn in 2007, Dr. McQueen was a professor in the Department of Pharmacology and Toxicology at the University of Arizona. Her research in the areas of pharmacogenomics, toxicogenomics and chemical carcinogenesis investigates the role of genetic variation in response to chemicals. Dr. McQueen is particularly interested in the genes that code for N-acetyltransferases (NAT1 and NAT2), enzymes involved in the metabolism of aromatic amines and hydrazines. She is using model systems to understand the mechanisms of the adverse effects of such chemicals during development and in adults. Dr. McQueen is an American Association for the Advancement of Science (AAAS) Fellow and a Fellow in the Academy of Toxicological Sciences (ATS). She has been on numerous review panels for the National Institutes of Health (NIH) and served on the Board of Scientific Councillors of the National Toxicology Program. She is currently a member of the NIH Cancer Etiology Study Section.

7. Martha Sandy, Ph.D., Senior Toxicologist/Chief, Cancer Toxicology and Epidemiology Section, California Environmental Protection Agency, Oakland, CA.

i. Expertise. Risk assessment, children's health, carcinogen exposure.

ii. Education. M.P.H. and Ph.D., in Environmental Health Science, University of California; Berkeley School of Public Health.

iii. Professional experience. Dr. Sandy is a Senior Toxicologist and Chief of the Cancer Toxicology and Epidemiology Section within the California Environmental Protection Agency's (Cal/EPA) Office of Environmental Health Hazard Assessment (OEHHA). Dr. Sandy's section conducts hazard identification, dose-response assessment, and exposure assessment of chemical carcinogens. Children's environmental health, and in particular, cancer risk associated with early life carcinogen exposures, has been a significant focus in recent years. Her group is comprised of individuals with expertise in toxicology, epidemiology, biostatistics and exposure assessment. She conducted research investigating biochemical and molecular mechanisms of toxicity and carcinogenicity, and biochemical and genetic susceptibility factors in Parkinson's disease before joining OEHHA in 1994. Dr. Sandy currently serves on EPA's Children's Health Protection Advisory Committee and has served as an ad hoc member of two EPA Scientific Review panels, as a member of two National Academy committees, as a member of one Report on Carcinogens Expert panel, and as a peer reviewer for the National Research Council.

8. Coby Schal, Ph.D., Blanton J. Whitmire Distinguised Professor of Structural Pest Management, North Carolina State University, Raleigh, NC.

i. Education. B.S. in Biology, State University of New York at Albany; Ph.D. in Entomology, University of Kansas - Lawrence; post–doctoral training in chemical ecology, University of Massachusetts-Amherst.

ii. Expertise. Entomology, pest management.

iii. Professional experience. Dr. Schal is co-founder and member of the Executive Committee of the W. M. Keck Center for Behavioral Biology, on the Executive Committee of the Genetic Pest Management Program, and member of the Agromedicine Institute. Between 1984 and 1993, Dr. Schal was Assistant and Associate Professor and Extension Specialist of Urban Entomology at Rutgers University, New Jersey. He is a leading authority on cockroach and bed bug behavior, chemical ecology, physiology, toxicology, biochemistry and molecular biology. His research has resulted in publications, patents, and tools for pest management. Dr. Schal's research on chemical ecology has delineated pheromone-mediated communication in cockroaches, oviposition attractants in mosquitoes and the evolution of pheromone communication in moths. His team also characterized the role that juvenile hormone plays in regulating sexual behavior and sexual maturation in insects and studies the function and regulation of cuticular waxes in various insects. Research in urban entomology in the last decade has concentrated on the biology of cockroach-produced allergens and intervention strategies to mitigate their pervasiveness in the indoor environment; profiles and mechanisms of insecticide resistance that form the basis for recommendations to the pest control industry; optimization of bait delivery systems, developing and testing repellents against urban pests, and assessing the impact of these approaches on pest behavior, humans, and the environment; and practical integrated solutions (IPM) to cockroach problems in livestock production facilities that emphasize reduced-risk approaches. Dr. Schal's research has been funded by EPA, NIH, NSF, USDA, private foundations and industry, and he has published over 200 refereed papers. He has served as subject editor of the Journal of Economic Entomology and Pest Management Science, and on the editorial boards of Archives of Insect Biochemistry and Physiology, Journal of Chemical Ecology, Journal of Insect Science, and Psyche. Dr. Schal also served on several EPA panels and as panelist and panel manager for USDA grants panels, and has been an active volunteer with the Entomological Society of America, the Entomological Foundation, and the International Society of Chemical Ecology. He has directed 24 graduate students and 26 post-doctoral researchers, and mentored high school and undergraduate students. Dr. Schal teaches a graduate course in Insect Behavior, graduate seminars in Urban Entomology and Chemical Ecology, and contributes to a team-taught Professional Development course. Recent honors include Lifetime Honorary Membership in the North Carolina Pest Management Association, Distinguished Achievement Award in Urban Entomology from the National Conference on Urban Entomology, Fellow of the Entomological Society of America, Fellow of the American Association for the Advancement of Science, and North Carolina State University's Research Friend of Extension Award and Alumni Association Outstanding Research Award.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 20, 2010.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2010–18900 Filed 8–3–10; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8834–9]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before September 3, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 0E7717*. (EPA–HQ–OPP–2010–0472). IR-4 Project, Rutgers, The State University of NJ, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide zeta-cypermethrin, in or on pistachio at 0.05 parts per million (ppm), artichoke, globe at 0.80 ppm; barley, grain at 1.7 ppm; barley, hay at 5.0 ppm; barley, straw at 19.0 ppm; buckwheat, grain at 1.7 ppm; buckwheat, hay at 5.0 ppm; buckwheat, straw at 19.0 ppm; oat, grain at 1.7 ppm; oat, hay at 5.0 ppm; oat, straw at 19.0 ppm; rye, grain at 1.7 ppm; rye, hay at 5.0 ppm; and rye, straw at 19.0 ppm. There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection) (GC/ECD). Contact: Andrew Ertman, (703) 308–9367, e-mail address: *ertman.andrew@epa.gov*.

2. *PP 0F7719*. (EPA–HQ–OPP–2010–0526). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the plant growth regulator, trinexapac-ethyl: 4-(cyclopropyl-α-hydroxy-methylene)-3,5-dioxo-cyclohexanecarboxylic acid ethyl ester expressed as its primary metabolite CGA-179500: 4-(cyclopropyl-α-hydroxy-methylene)-3,5-dioxo-cyclohexanecarboxylic acid, in or on grass, forage, grown for seed at 1.60 ppm; grass, hay, grown for seed at 3.5 ppm; grass, seed screenings, grown for seed at 45.0 ppm; grass, straw, grown for seed at 12 ppm; cattle, fat at 0.05 ppm; cattle, meat at 0.05 ppm; cattle, meat byproducts at 0.05 ppm; goat, fat at 0.05 ppm; goat, meat at 0.05 ppm; goat, meat byproducts at 0.05 ppm; horse, fat at 0.05 ppm; horse, meat at 0.05 ppm; horse, meat byproducts at 0.05 ppm; sheep, fat at 0.05 ppm; sheep, meat at 0.05 ppm; sheep, meat byproducts at 0.05 ppm. Syngenta Crop Protection is submitting Analytical Method GRM020.01A for the Determination of Residues of Trinexapac-ethyl as CGA-179500 in Crops by liquid chromatography-mass spectrometry/mass spectrometry (LC-MS/MS) for detecting and measuring levels of trinexapac-ethyl expressed as its major metabolite CGA-179500, in or on food with a limit of quantitation (LOQ) that allows monitoring of food with residues at or above the levels set in the proposed tolerances. The LOQ for CGA-179500 is 0.01 ppm for all matrices. Syngenta Crop Protection is also submitting Analytical Method REM 137.14 for the Determination of Residues of Trinexapac Acid (CGA 179500) in Animal Matrices. The LOQ has been set at 0.01 milligrams/kilogram (mg/kg) with final analysis by LC-MS/MS for egg, kidney, liver, muscle and fat. The LOQ has been set at 0.005 mg/kg for LC-MS/MS determination for milk. Contact: Bethany Benbow, (703) 347–8072, e-mail address: *benbow.bethany@epa.gov*.

3. *PP 0F7720*. (EPA–HQ–OPP–2010–0524). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the plant growth regulator, trinexapac-ethyl: 4-(cyclopropyl-α-hydroxy-methylene)-3,5-dioxo-cyclohexanecarboxylic acid ethyl ester expressed as its primary metabolite CGA-179500: 4-(cyclopropyl-α-hydroxy-methylene)-3,5-dioxo-cyclohexanecarboxylic acid, in or on barley, grain at 1.6 ppm; barley, hay at 0.7 ppm; barley, straw at 0.35 ppm; cattle, kidney at 0.05 ppm; hog, kidney at 0.05 ppm; sugarcane, cane at 0.8 ppm; oat, forage at 1.0 ppm; oat, grain at 4.1 ppm; oat, hay at 1.3 ppm; oat, straw at 0.7 ppm; wheat, forage at 1.0 ppm; wheat, grain at 4.1 ppm; wheat, hay at 1.3 ppm; and wheat, straw at 0.7 ppm. Syngenta Crop Protection is submitting Analytical Method GRM020.01A for the Determination of Residues of Trinexapac-ethyl as CGA-179500 in Crops by LC-MS/MS for detecting and measuring levels of trinexapac-ethyl expressed as its major metabolite CGA-179500, in or on food with a LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. Method validation data using this method on various crop commodities is presented in the validation study. The LOQ for CGA-179500 is 0.01 ppm for all matrices. Syngenta Crop Protection is also submitting Analytical Method REM 137.14 for the Determination of Residues of Trinexapac Acid (CGA 179500) in Animal Matrices. The LOQ has been set at 0.01 mg/kg with final analysis by LC-MS/MS for egg, kidney, liver, muscle, and fat. The limit of quantification has been set at 0.005 mg/kg for LC-MS/MS determination for milk. Contact: Bethany Benbow, (703) 347–8072, e-mail address: *benbow.bethany@epa.gov*.

4. *PP 0F7725*. (EPA–HQ–OPP–2010–0496). Monsanto Company, 1300 I St., NW., Suite 450 East, Washington DC 20052, proposes to establish tolerances in 40 CFR part 180 for residues of the

herbicide dicamba (3,6-dichloro-o-anisic and its metabolites 3,6-dichloro-5-hydroxy-o-anisic acid (5-OH dicamba) and 3,6-dichloro-2-hydroxybenzoic acid (DCSA), in or on soybean, forage at 45 ppm and soybean, hay at 70 ppm. Adequate enforcement methods are available for the analysis of residues of dicamba and its relevant metabolites in or on plant and livestock commodities. Pesticide Analytical Manual (PAM) Vol. II lists appropriate analytical methods based on GC/ECD, that are sufficient to provide for the enforcement of proposed dicamba tolerances in soybean forage and hay. Contact: Michael Walsh, (703) 308–2972, e-mail address: *walsh.michael@epa.gov*.

5. *PP 9F7666*. (EPA–HQ–OPP–2010–0494). ISK Biosciences Corporation, 7470 Auburn Rd., Suite A, Concord, OH 44077, proposes to establish tolerances in 40 CFR part 180 for residues of the herbicide flazasulfuron, N-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(trifluoromethyl)-2-pyridinesulfonamide, in or on fruit, citrus, group 10 at 0.01 ppm; grapes at 0.01 ppm; and sugarcane at 0.01 ppm. A practical analytical method for flazasulfuron and metabolite 1-(4,6-dimethoxypyridin-2-yl)-1-(3-trifluoromethyl-2-pyridyl)urea (DTPU) using LC-MS/MS is available for enforcement purposes. The limit of detection (LOD) is 0.003 ppm. Contact: Hope Johnson, (703) 305–5410, e-mail address: *johnson.hope@epa.gov*.

6. *PP 9F7676*. (EPA–HQ–OPP–2010–0296). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish tolerances in 40 CFR part 180 for residues of the fungicide difenoconazole, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole), in or on carrot at 0.45 ppm; chickpeas at 0.05 ppm; fruits, stone, group 12 at 2.5 ppm; soybean, seed at 0.2 ppm; soybean, aspirated grain fraction at 95 ppm; strawberry at 2.5 ppm; and turnip, greens at 35 ppm. Syngenta Crop Protection, Inc. has submitted a practical analytical method (AG-575B) for detecting and measuring levels of difenoconazole in or on food with a LOQ that allows monitoring of food residues at or above the levels set in the proposed tolerances. Residues are qualified by LC-MS/MS. Contact: Rose Mary Kearns, (703) 305–5611, e-mail address: *kearns.rosemary@epa.gov*.

Amended Tolerance

PP 9F7676. (EPA–HQ–OPP–2010–0296). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to amend the tolerance in 40 CFR 180.475 for residues of the fungicide difenoconazole, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole) by increasing the existing tolerance in or on milk from 0.01 ppm to 0.08 ppm. Syngenta Crop Protection, Inc. has submitted a practical analytical method (AG-575B) for detecting and measuring levels of difenoconazole in or on food with a LOQ that allows monitoring of food residues at or above the levels set in the proposed tolerances. Residues are qualified by LC-MS/MS. Contact: Rose Mary Kearns, (703) 305–5611, e-mail address: *kearns.rosemary@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 23, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–18899 Filed 8–3–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8837–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these request are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been canceled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before September 3, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Attention: Maia Tatinclaux.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–1017. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: *tatinclaux.maia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to cancel 76 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Active Ingredients
000004–00146	Crabgrass Preventer & Weed Killer	Siduron
000004–00179	Crabgrass Preventer & Weed Killer	Siduron
000004–00355	Bonide Home Orchard Spray	Malathion Captan Sulfur
000004–00375	Bonide Porch, Patio, Garden and Ornamental Spray	Piperonyl butoxide Pyrethrins
000004–00386	Bonide Pyrethrin Growers Spray	Pyrethrins
000239–02523	Flea-B-Gon Flea Killer Formula II	Tetramethrin Phenothrin
000239–02524	Ortho Home & Garden Insect Killer Formula II	Tetramethrin Phenothrin
000239–02525	Ortho Flying & Crawling Insect Killer Formula II	Tetramethrin Phenothrin
0002397–02535	Ortho Dog &Cat Flea Spray	Tetramethrin Phenothrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
000241–00295	Arsenal Herbicide 0.5 Granule	Imazapyr
000241–00308	Arsenal 5-G Herbicide	Imazapyr
000270–00356	Mycodex Premise Control Household Spray	Tetramethrin Phenothrin Pyriproxyfen
000464–00665	Dow Diesel Fuel Conditioner	4-(2-Nitrobutyl) morpholineMorpholine, 4,4'-(2-ethyl-2-nitro-1,3-propanediyl)bis-
000464–00678	Fuelsaver F-15-Fuel Additive	4-(2-Nitrobutyl) morpholineMorpholine, 4,4'-(2-ethyl-2-nitro-1,3-propanediyl)bis-
000499–00291	Whitmire Sumithrin ME	Phenothrin
000499–00321	Whitmire PT 120-3	Phenothrin
000499–00381	Whitmire PT 175	MGK 264 Piperonyl butoxide Pyrethrins
000499–00389	Whitmire PT 120 HO Sumithrin Contact Insecticide	Phenothrin
000506–00140	Tat Hornet and Wasp Killer	Phenothrin Tetramethrin
000524–00478	Bollgard BT Cotton	*Bacillus thuringiensis* var. *kurstaki* delta endotoxin protein as produced by the Cry1A(c) gene and its controlling sequences
001020–00014	Oakite Biocide 20	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyldichloride)
001021–01393	Multicide® Concentrate 2128	Phenothrin
001021–01557	Multicide Intermediate 2471	Phenothrin
001021–01719	Pyrocide Insecticide II	Piperonyl butoxide Pyrethrins Silicon dioxide
001021–01843	Permethrin 10% Pour On	Permethrin
001021–01844	Permethrin 0.25% Granules	Permethrin
001021–01848	Permethrin 3.2 MUP	Permethrin
001021–01849	Permethrin 0.5%G Homeowner	Permethrin
001021–01850	Permethrin 0.5%GC	Permethrin
001270–00073	Zep Thermo-Fog Insecticide	MGK 264 Piperonyl butoxide Pyrethrins
002217–00854	EH1392 Herbicide	Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-,butil ester,®
002517–00076	Sergeant's X-term Household Flea & Tick Killer with Nylar	Tetramethrin Phenothrin Pyriproxyfen
002724–00529	Speer Household Insect Killer	Phenothrin Tetramethrin
002724–00530	Speer Household Insect Spray	Phenothrin Tetramethrin
002724–00533	Speer Magic Guard Insect Killer	Phenothrin Tetramethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
002724–00536	Speer Automatic Indoor Fogger	Phenothrin Tetramethrin
002724–00537	Better World House and Garden Insect Killer	Phenothrin Tetramethrin
002724–00538	Speer Pyrethroid Concentrate T-12/4 (Oil Dilutable)	Phenothrin Tetramethrin
0027247–00540	Purr-R-Fect Pet (Pressurized) Flea Spray for Cats	Phenothrin Tetramethrin
002724–00541	Purr-R-Fect Pet Flea Spray for Cats	Phenothrin Tetramethrin
002724–00542	Better World Brand Pressurized Plant Spray	Phenothrin Tetramethrin
002724–00543	Happy Dog (Pressurized) Flea & Tick Spray for Dogs	Phenothrin Tetramethrin
002724–00545	Speer Six-Month Mothproofer	Phenothrin Tetramethrin
002724–00547	Happy Dog Flea and Tick Spray for Dogs	Phenothrin Tetramethrin
002724–00549	Speer Fogger and Contact Insecticide	Phenothrin Tetramethrin
002724–00597	Farnam Flying Insect Killer	Phenothrin Tetramethrin
002724–00599	Repel-X II	Butoxypolypropylene glycol Tetramethrin Phenothrin
002724–00604	Farnam Flying Insect Killer	Phenothrin Tetramethrin
002724–00615	Mug-A-Bug VI Total Release Aerosol Fogger	Phenothrin Tetramethrin
002724–00663	Speer Flea Spray for Carpets and Furniture with Nylar	Phenothrin Tetramethrin Pyriproxyfen
004313–00087	Wasp & Hornet Killer ”Jet Stream“	Tetramethrin Phenothrin
004822–00172	Raid Household Flying Insect Killer Formula 3	Phenothrin Bioallethrin
004822–00465	P/P Flea & Tick Spray No. 2	Phenothrin Tetramethrin
005178–00004	Fish Brand E Mosquito Coils	Bioallethrin
006836–00123	Glybrom RW-95	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl- and 1-3-Dibromo-5,5-dimethylhydantoin
006836–00250	Dantobrom P Granular	2,4-Imidazolidinedione,1-bromo-3-chloro-5,5-dimethyl- ;1-3-Dibromo-5,5-dimethylhydantoin and 1-3, Dichloro-5-ethyl-5-methylhydantoin
008848–00042	Black Jack Flea and Tick Killer for Carpets and Rugs	Phenothrin Tetramethrin
010308–00014	Vape Mat	d-Allethrin
010308–00015	Pynamin Forte 60 Mosquito Mat	d-Allethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
010308–00016	Pynamin Forte 120 Mosquito and Fly Mat	d-Allethrin
010308–00017	Pynamin Forte Mosquito Coil	d-Allethrin
019713–00347	Macco Industrial Strength Pyrethrin	Piperonyl butoxide Pyrethrins Xylene range aromatic solvent
019713–00313	Pearsons Institutional Bug Killer	Piperonyl butoxide Pyrethrins
019713–00315	Pearson's Grain Spray	Piperonyl butoxide Pyrethrins
019713–00347	Macco Industrial Strength Pyrethrin	Piperonyl butoxide Pyrethrins Xylene range aromatic solvent
019713–00348	Macco Pyrethrin Fogging Spray	Piperonyl butoxide Pyrethrins Xylene range aromatic solvent
019713–00349	Macco Dairy Spray	Piperonyl butoxide Pyrethrins
047371–00138	Formulation RTU-451	Alkyl dimethyl benzyl ammonium chloride (50% c14, 40% C12, 10% C16)
047371–00177	Formulation RTU-PA 1210	Alkyl dimethyl benzyl ammonium chloride (50% c14, 40% C12, 10% C16) and 1-Decanaminium, N-decyl-N,N-dimethyl-chloride
053883–00031	Permethrin Technical	Permethrin
070127–00004	Beetleball Technical	Benzene,1-methoxy-4-(2-propenyl)-
070506–00199	TOTH 80 WP	Fentin hydroxide
070506–00203	Tebuconazole 3.6FL Liquid Flowable Fungicide	Tebuconazole
070506–204	Tebuconazole 45 WDG	Tebuconazole
075341–00005	Cop-R-Plastic Wood Preserving Compound	Copper naphthenate Sodium fluoride
075844–00003	Freedom Premise Spray	Deltamethrin

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
4	Bonide Products, Inc. Agent Registrations By Design, Inc. P.O. Box 1019 Salem, VA 24153–3805

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
239	The Scotts Company 14111 Scott Lawn Road Marysville, OH 43041
241	BASF Corporation 26 Davis Drive, P.O. Box 13528 Research Triangle Park, NC 27709–3528
270	Farnam Companies, Inc. D/B/A Central Life Sciences 301 West Osborn Road Phoenix, AZ 85013

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
464	The Dow Chemical Co. 1500 East Lake Cook Road Buffalo Grove, IL 60089
499	Whitmire Micro-Gen Research Laboratories, Inc. Agent Name: BASF CORP. 3568 Tree Court Industrial Blvd. St. Louis, MO 63122–6682
506	Walco Linck Company 30856 Rocky Road Greeley, CO 80631–9375

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
524	Monsanto Company 1300 I Street, NW Suite 450 East Washington, DC 20005
1020	Chemetall US, Inc. 675 Central Avenue New Providence, NJ 07974–0007
1021	McLaughlin Gormley King Co. 8810 Tenth Ave North Minneapolis, MN 55427–4319
1270	ZEP Inc. 1310 Seaboard Industrial Blvd., NW Atlanta, GA 30318
2217	PBI/Gordon Corp. 1217 West 12th Street P.O. Box 014090 Kansas City, MO 64101–0090
2517	Sergeant's Pet Care Products, Inc. 2625 South 158th Plaza Omaha, NE 68130–1703
2724	Wellmark International 1501 E. Woodfield Road Suite 200 West Schaumburg, IL 60173
4313	Carroll Company 2900 W. Kingsley Rd Garland, TX 75041
4822	S.C. Johnson & Son, Inc. 1525 Howe St. Racine, WI 53403
5178	Blood Protection Co. Ltd. P.O. Box 65436 Tucson, AZ 85728
6836	Lonza Inc. 90 Boroline Road Allendale, NJ 07401
8848	Safeguard Chemical Corp. 411 Wales Avenue Bronx, NY 10454
10308	Sumitomo Chemical Company Ltd. 1600 Riviera Avenue, Suite 200 Walnut Creek, CA 94596–8025
19713	Drexel Chemical Company, 1700 Channel Avenue P.O. Box 13327 Memphis, TN 38113–0327

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
47371	H&S Chemicals Division 90 Boroline Road Allendale, NJ 07401
53883	Control Solutions, Inc. 427 Hide Away Circle Cub Run, KY 42729
70127	Novozymes Biologicals, Inc. 1150 Conn., Avenue, NW Suite 1100 Washington, DC 20036
70506	United Phosphorus, Inc. 630 Freedom Business Center, Suite 402 King of Prussia, PA 19406
75341	Osmose Utility Services Inc. 980 Ellicott Street Buffalo, NY 14209
75844	Andrew M Martin Co. NV. Inc. Agent Technology Sciences Group Inc. 4061 N. 156th Drive Phoenix, AZ 85338

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 30–day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States (U.S.) and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

A. Disposition of Existing Stocks For All Table 1 Products Except EPA Reg. No. 524-478

Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II. (except EPA Reg. No. 524-478), EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling, formulating or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

B. Disposition of Existing Stocks For EPA Reg. No. 524–478

In accordance with a "phase-out" agreement negotiated with Monsanto Company in conjunction with an amendment request for EPA Reg. No. 524–478, all sale, distribution, and planting of Bollgard® Cotton (EPA Reg. No. 524–478) is prohibited after July 1, 2010. The terms of the negotiated U.S. phase–out strategy include:

1. Production of Bollgard® Cotton (EPA Reg. No. 524–478) by Monsanto Company after September 30, 2009, is prohibited.

2. All sales of Bollgard® Cotton after September 30, 2009, are prohibited.

3. Planting of Bollgard® Cotton seed after midnight of July 1, 2010, is prohibited.

4. All Bollgard® Cotton seed not planted on or before July 1, 2010, must be returned either to the retailer or to Monsanto Company. As a consequence of the U.S. phase-out strategy for Bollgard® Cotton, sale, distribution, and/or planting of Bollgard® Cotton is prohibited. All existing stocks must be returned to Monsanto Company or to an authorized retailer. These prohibitions will be reflected in the pending final order cancelling the registration for Bollgard® Cotton.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 22, 2010

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–18898 Filed 8–3–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–8837–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been canceled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 31, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Attention: Maia Tatinclaux.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0014. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: *tatinclaux.maia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to cancel 33 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Active Ingredients
000004-00372	Bonide Pyrenone Garden Dust	Piperonyl butoxide Pyrethrins
000352-00401	Dupont Oust Herbicide	Sulfometuron
000498-00160	Spraypak Wasp and Hornet Killer Foam	Tetramethrin Phenothrin
000498-00178	Champion Sprayon Roach Spray	Phenothrin
002915-00059	Insecticide	Tetramethrin Phenothrin
003573-00064	Ultra Spic and Span	Sodium hydroxide
003862-00127	Wasp and Hornet Killer	Tetramethrin Phenothrin
008842-00003	Vape Mat	d-Allethrin
008842-00008	Fumakilla Mosquito Coils	d-Allethrin
009198-00181	Anderson"s Starter Fertilizer with Preemergent Weed Control	Siduron
044446-00053	Kill A Bug II Insect Spray	Phenothrin
044446-00066	Aero Roach & Ant Insecticide	Phenothrin
045188-00002	Harrison Flea and Tick Shampoo for Dogs	Piperonyl butoxide Pyrethrins MGK 264
050534-00009	Daconil 2787 Flowable Fungicide	Chlorothalonil
050534-00216	Countdown L&G	Chlorothalonil
053883-00164	Sulfometuron Methyl 75	Sulfometuron
064240-00023	Combat Flying Insect Killer 2	Tetramethrin Phenothrin
066330-00253	40% Insecticidal Soap	Potassium laurate
084456-00002	Max-Aba Imidacloprid Technical	Imidacloprid
084538-00003	Kayari Aromatic Mosquito Coils	d-Allethrin
085678-00001	Glyph Hoho 4S	Glyphosate-isoproplyammonium
085678-00006	RedEagle Glyphosate Technical	Glyphosate
085678-00007	Glyphosate 62% Manufacturing Concentrate	Glyphosate-isoproplyammonium

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
CA900010	Volck Supreme Spray	Mineral Oil - includes paraffin oil from 063503
CA910030	Volck Supreme Spray	Mineral Oil - includes paraffin oil from 063503
FL890033	Deamon CC Insecticide	Cypermethrin
ID030017	Prowel H2O Herbicide	Pendimethalin
KY030003	Dual Magnum Herbicide	S-Metolachlor
KY030004	Dual Magnum Herbicide	S-Metolachlor
OR910028	Fruitone-N	Sodium 1-napthaleneaceate
TX040007	Fusliade DX Herbicide	Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, butyl ester, R-
WA060003	Subdue Maxx	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester
WA070003	Focus SC	Fenarimol

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

Company No.	Company Name and Address
4	Bonide Products, Inc. Agent Registrations By Design, Inc P.O. Box 1019 Salem, VA 24153–3805
352	E. I. Du Pont De Nemours and Co., Inc. (S300/419) 1007 Market Street Wilmington, DE 19898–1000
498	Chase Products Co. P.O. Box 70 Maywood, IL 60153
2915	The Fuller Brush Company One Fuller Way Great Bend, KS 67530
3573	Procter & Gamble Company TheD/B/A Procter & Gamble 5299 Spring Grove Avenue - F&HC PS&RA Cincinnati, OH 45217
3862	ABC Compounding Co, Inc. P.O. Box 16247 Atlanta, GA 30321
8842	Fumakilla Ltd. 1330 Dillon Heights Avenue Baltimore, MD 21228-1199
9198	The Anderson"s Lawn Fertilizer Division, Inc. P.O. Box 119 Maumee, OH 43537
44446	Quest Chemical Company 12255 F.M. 529 Northwoods Industrial Park Houston, TX 77041

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

Company No.	Company Name and Address
45188	Harrison Specialty Co., Inc. 15 University P.O. Box H Canton, MA 02021
50534	GB Biosciences Corporation 410 Swing Road P.O. Box 18300 Greensboro, NC 27419–5458
53883	Control Solutions, Inc. 427 Hide Away Circle Cub Run, KY 42729
64240	Combat Insect Control Systems 122 C Street, NW Suite 740 Washington, DC 20001
66330	Arysta Lifescience North America, LLC 155401 Weston Parkway Suite 150 Cary, NC 27513
84456	Hebei Veyong Bio-Chemical Co., Ltd. Agent Wagner Regulatory Associates, Inc 4760 Lancaster Pike, Suite 9 P.O. Box 640 Hockessin, DE 19707–0640
84538	Sathaporn Marketing Company, Ltd. 1330 Dillon Heights Avenue Baltimore, MD 21228–1199
85678	RedEagle International LLC Agent Wagner Regulatory Associates, Inc. 4760 Lancaster Pike, Suite 9, P.O. Box 640 Hockessin, DE 19707–0640
CA900010; CA910030	Wilbur Ellis Company P.O. Box 1286 Fresno, CA 93715
FL890033; KY030003; KY030004; TX040007; WA060003	Syngenta Crop Protection, Inc. ATTN: Regulatory Affairs P.O. Box 18300 Greensboro, NC 27419–8300
ID030017	BASF Corporation 26 Davis Drive P.O. Box 13528 Research Triangle Park, NC 27709–3528
OR910028	AMVAC Chemical Corporation D/B/A AMVAC. 4695 MacArthur Court Suite 1250 Newport Beach, CA 92660–1706
WA070003	Gowan Company P.O. Box 5569 Yuma, AZ 85336–5569

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of

any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have not requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 180–day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 22, 2010.

Richard P. Keigwin, Jr.

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–18902 Filed 8–3–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 22, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 4, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1110.

Title: Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters, FCC 07–103.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 118 respondents; 118 responses.

Estimated Time Per Response: 24 hours.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 154(i), 201, and 303(r) and 5 U.S.C. section 554 of the Administrative Procedures Act.

Total Annual Burden: 2,832 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring collection after this comment period to the Office of Management and Budget (OMB) to obtain the full three year clearance from them. The Commission is reporting an adjustment decrease in burden by 8,016 hours.

On June 15, 2007, the Federal Communications Commission ("Commission") released a Memorandum Opinion and Order (MO&O), FCC 07–103, which denied a petition for rulemaking to extend the requirement that all cellular radiotelephone licensees provide analog service e to subscribers and roamers whose equipment conforms to the Advanced Mobile Phone Service (AMPS) standard. This requirement will sunset on February 18, 2008. In the MO&O, the Commission also directed cellular radiotelephone service licensees to notify their remaining analog subscribers of the sunset date and of their intention to discontinue AMPS–compatible analog service at least four months before such discontinuance, and a second time, at least 30 days before such discontinuance (the "consumer–notice requirement").

The consumer–notice requirement will ensure that remaining analog cellular service subscribers, including persons with hearing disabilities, are fully apprised of the sunset of the analog cellular service requirement.

Federal Communications Commission.

Bulah P. Wheeler,

Acting Associate Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–19124 Filed 8–3–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

July 29, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 3, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0179.

Title: Section 73.1590, Equipment Performance Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for–profit entities; Not–for–profit institutions.

Number of Respondents and Responses: 13,049 respondents and 13,049 responses.

Estimated Time per Response: 0.5 –18 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 12,335 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1590(d) states the data required by paragraphs (b) and (c) of this section, together with a description of the equipment and procedure used in making the measurements, signed and dated by the qualified person(s) making the measurements, must be kept on file at the transmitter or remote control point for a period of two years, and on request must be made available during that time to duly authorized representatives of the FCC.

Federal Communications Commission.

Bulah P. Wheeler,

Acting Associate Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–19125 Filed 8–3–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 18, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Shelby Cicero Peeples, Jr., Dalton, Georgia; to acquire additional voting shares of FBD Holding Company, Inc., and thereby indirectly acquire additional voting shares of First Bank of Dalton, both of Dalton, Georgia.

2. Kenneth Richard Murray, Naples, Florida; to retain voting shares of Naples Bancorp, Inc., and thereby indirectly retain voting shares of Bank of Naples, both of Naples, Florida.

Board of Governors of the Federal Reserve System, July 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–19070 Filed 8–3–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 2010.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Commuity Trust Bancorp, Inc., Pikeville, Kentucky; to merge with LaFollette First National Corporation, and thereby indirectly acquire First National Bank of LaFollette, both of LaFollette, Tennessee.

Board of Governors of the Federal Reserve System, July 30, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–19106Filed 8–3–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Emigrant Bancorp, Inc., New York, New York; will convert its federal savings bank subsidiary, New York Private Bank & Trust, FSB, Wilmington, Delaware, into a trust company to be named, New York Private Trust Company, and thereby engage *de novo* in trust company activities, pursuant to section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–19069 Filed 8–3–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011426–048.

Title: West Coast of South America Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; APL Co. Pte Ltd.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd.; and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Interocean Lines, Inc. as a party to the Agreement.

Dated: July 30, 2010.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–19147 Filed 8–3–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Aaron P.B. Production Corporation (NVO & OFF), 501 New County Road, Secaucus, NJ 07094, *Officers:* Mariusz Piwowarczuk, Vice President, (Qualifying Individual), Czeslaw Golaszewski, Dir./Pres./Sec./Treas.

Atlantic Cargo Logistics LLC (NVO), 120 S. Woodland Blvd., #216, DeLand, FL 32720, *Officers:* Dietmar Lutte, Manager Member, (Qualifying Individual), Susan Lutte, Member, *Application Type:* New NVO License.

Bridgeline Logistics Incorporated (OFF), 700 Berron Lane, Barrington, IL 60010, *Officer:* Machiko K. Hamada, President/CEO, (Qualifying Individual), *Application Type:* New OFF License.

CALS Logistics USA, Inc. (NVO & OFF), 755 N. Route 83, #215, Bensenville, IL 60106, *Officers:* Szuyao Liu, Customer Service Officer—Air & Ocean, (Qualifying Individual), Bok Hoe Chun, President, *Application Type:* New NVO & OFF License.

CBC Freight Solutions LLC (NVO & OFF), 4680 NW 74th Avenue, Miami, FL 33166, *Officers:* Erick A. Chacin Guaschi, COO, (Qualifying Individual), Pablo Cardenas, President, *Application Type:* New NVO & OFF License.

Continental Logistic, LLC dba SUR Logistics (OFF), 1322 E. Pacific Coast Highway, Suite B, Wilmington, CA 90744, *Officers:* Ernie R. Zavaleta, Vice President, (Qualifying Individual), Oscar E. Sorto, CEO, *Application Type:* New OFF License.

Domek Logistics, L.L.C. (NVO & OFF), 265 Exchange Drive, Suite 203, Crystal Lake, IL 60014, *Officer:* David Domek, Manager, *Application Type:* New NVO & OFF License.

Duke System Logistics Inc. (NVO & OFF), 18645 E. Gale Avenue, #233, City of Industry, CA 91748, *Officer:* Kaihong Yang, President/CEO, *Application Type:* New NVO & OFF License.

Florida Trade Consolidators Inc. (NVO & OFF), 1400 NW 96th Avenue, Miami, FL 33172, *Officer:* Samir Asaad, President, (Qualifying Individual), *Application Type:* Add OFF Service.

Foothills Logistics, Inc. (NVO & OFF), 2045 John Crosland Jr. Way, Charlotte, NC 28208, William A. Pottow, Vice President, (Qualifying Individual), Janine Antonio, President/Secretary, *Application Type:* License Transfer.

Gina Marie Cianelli dba Global Bookings (OFF), 261 Jerry Allen Ridge, Dallas, GA 30132, *Officer:* Gina M. Cianelli, Sole Proprietor, (Qualifying Individual), *Application Type:* New OFF License.

Global Freight Forwarders Inc. (NVO & OFF), 11231 N.W. 20th Street, #126, Miami, FL 33172, *Officers:* Rosie Huc, Secretary, (Qualifying Individual), Jose Gonzalez, President, *Application Type:* New NVO & OFF License.

Hermes International Movers Corp. (NVO & OFF), 23–83 31st Street, Astoria, NY 11105, *Officers:* Ioannis Ladis, Jr., Vice President, (Qualifying Individual), Ioannis Ladis, Sr., President, *Application Type:* QI Change.

Innovative Logistics LLC (NVO), 201 West Canton Avenue, D, Winter Park, FL 32789, (Qualifying Individual), Todd M. Wilcox, Managing Member, (Qualifying Individual), Ammar Charani, Member, *Application Type:* New NVO.

John Nikoghossian dba Pactransport (OFF), 9245 Scotmont Drive, Tujunga, CA 91042, *Officer:* John Nikoghossian, Sole Proprietor, (Qualifying Individual), *Application Type:* New OFF License.

Mira Transport USA, Inc. (OFF), 16 Pershing Street, Staten Island, NY 10305, *Officers:* Veronica V. Cairns, President/Secretary/Treasurer, (Qualifying Individual), Serhat Dagtas, Vice President, *Application Type:* New OFF License.

Nippon Express U.S.A., Inc. (OFF), 590 Madison Avenue, Suite 2401, New York, NY 10022–2524, *Officers:* Michiya Shimizu, Senior Vice President/General Manager, (Qualifying Individual), Kenryo Senda, President/CEO, *Application Type:* QI Change.

Phoenician Maritime LLC (NVO & OFF), 12604 Haynes Road, Houston, TX 77066, *Officers:* George S. Haddad, Vice President, (Qualifying Individual), Ali Assi, President, *Application Type:* New NVO & OFF License.

Prime Van Lines, Inc. (OFF), 297 Getty Avenue, Paterson, NJ 07503, *Officers:* Robert F. Lonek, Secretary, (Qualifying Individual), Betty Bendavid, President/Secretary, *Application Type:* New OFF License.

Starlink Worldwide Express Company Limited (NVO), 15040 71st Avenue, 5E, Flushing, NY 11367, *Officer:* Jing Y. Zhang, President, (Qualifying Individual), *Application Type:* New NVO.

Sozo International Inc. dba J & L Logistics (NVO & OFF), 1627 Chico Avenue, S. El Monte, CA 91733, *Officers:* Zengyu (aka Jenny) Chen, CEO, (Qualifying Individual), Hong Ma, Secretary/Treasurer, *Application Type:* New NVO & OFF License.

Trans-Trade, Inc. dba Trans-Ocean Services, Inc. (NVO & OFF), 1040 Trade Avenue, #106, DFW Airport, TX 75261, *Officers:* Robert Carlson, Vice President, (Qualifying Individual), Brad Skinner, CEO, *Application Type:* Name Change.

Union Cargo Inc. (NVO & OFF), 9195 NW 101st Street, Medley, FL 33178, *Officers:* Malelly Vidal, Secretary, (Qualifying Individual), Maria De Cardona, President, *Application Type:* New NVO & OFF License.

USA Worldwide Shipping Inc. (NVO), 590 Belleville Turnpike, Bldg. No. 8, Kearny, NJ 07032, *Officers:* Samuel X. Mendonca, President, (Qualifying Individual), Anita Dsouza, Vice President, *Application Type:* New NVO License.

World Commerce Services, L.L.C. dba WLG USA, LLC (NVO & OFF), 920 E. Algonquin Road, Suite 120, Schaumburg, IL 60173, *Officers:* Duke David, Transportation Operations, (Qualifying Individual), Christopher Wood, CEO, *Application Type:* Trade Name Change.

Dated: July 30, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–19152 Filed 8–3–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 8325N.
Name: Happy Express, Inc.
Address: 720 South Hindry Avenue, Inglewood, CA 90301.
Date Revoked: July 4, 2010.
Reason: Failed to maintain a valid bond.

License Number: 8904F.
Name: Port Jersey Shipping International Inc.
Address: 268 Seaview Avenue, Jersey City, NJ 07305.
Date Revoked: July 1, 2010.
Reason: Failed to maintain a valid bond.

License Number: 14742N.
Name: North China Cargo Service Inc.
Address: 636 Brea Canyon Road, Walnut, CA 91789.
Date Revoked: July 5, 2010.
Reason: Failed to maintain a valid bond.

License Number: 15465N.
Name: Patriot Forwarders, Inc. dba Airwave Express.
Address: 155 Diplomat Drive, Suite D, Columbia City, IN 46525.
Date Revoked: July 14, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018193F.
Name: Cherokee Cargo Corporation.
Address: 6006 Lake Avenue, St. Joseph, MO 64504.
Date Revoked: July 20, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018249N.
Name: JJB Trucking Services Corp. & Shipping.
Address: 809 Adams Avenue, Elizabeth, NJ 07201.
Date Revoked: July 1, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018628N.
Name: Master Global Logistics, Inc.
Address: 758 South Glasgow Avenue, Inglewood, CA 90301.
Date Revoked: July 5, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018790N.
Name: Flash Forwarding, Inc.
Address: 169 Spencer Avenue, Lynbrook, NY 11563.
Date Revoked: July 21, 2010.
Reason: Surrendered license voluntarily.

License Number: 019408F.
Name: C & L, USA, Inc. dba C&L Freight Srvs.
Address: 20 Broadhollow Road, Suite 1005, Melville, NY 11747.
Date Revoked: July 17, 2010.
Reason: Failed to maintain a valid bond.

License Number: 019622NF.
Name: Summer Breeze Transport, Inc.
Address: 1106 A1A North, Suite 100–A, Ponte Vedra Beach, FL 32004.
Date Revoked: July 12, 2010.
Reason: Surrendered license voluntarily.

License Number: 019848N.
Name: J.K. Trading Inc. dba JK Envios.
Address: 822 SW 17th Avenue, Miami, FL 33135.
Date Revoked: July 3, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020486NF.
Name: Transportation Freight Group, LLC.
Address: 6025 Sandy Springs Circle, Suite 244, Atlanta, GA 30328.
Date Revoked: July 14, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021246F.
Name: Around The World Shipping, Inc.
Address: 6726 Reseda Blvd., Suite A–10, Reseda, CA 91335.
Date Revoked: July 7, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021413N.
Name: C&C International Logistics Inc.
Address: 99 West Hawthorne Avenue, Suite 620, Valley Stream, NY 11580.
Date Revoked: July 5, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021535F.
Name: Westward Global LLC.
Address: 18800 8th Avenue South, Suite 210, Seatac, WA 98148.
Date Revoked: July 3, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021685NF.
Name: G.S. Logistics, Inc.
Address: 4892 Dove Circle, La Palma, CA 90623.
Date Revoked: July 17, 2010.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. 2010–19145 Filed 8–3–10; 8:45 am]
BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 081 0130]

Nufarm Limited; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before August 30, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Nufarm, File No. 081 0130" to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://ftcpublic.commentworks.com/ftc/nufarm/*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://ftcpublic.commentworks.com/ftc/nufarm/*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Nufarm, File No. 081 0130" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Leonard L. Gordon (212-607-2801) or Jonathan W. Platt (212-607-2819), FTC Northeast Regional Office, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 28, 2010), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Nufarm Limited ("Nufarm" or "Respondent") to remedy the anticompetitive effects stemming from Nufarm's acquisition of A.H. Marks Holding Limited ("A. H. Marks"). Under the terms of the Consent Agreement, Nufarm is required to divest to Commission-approved buyers certain A. H. Marks assets, including regulatory permits and intellectual property, and take certain additional measures to restore competition in the markets for three phenoxy herbicide products: MCPA, MCPP-p, and 2,4DB.

On March 5, 2008, Nufarm acquired A. H. Marks. Both parties held, or had access to, regulatory approvals from the United States Environmental Protection Agency ("EPA") to sell MCPA, MCPP-p, and 2,4DB in the United States. The Commission's complaint alleges that the acquisition and acquisition agreement violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, by lessening competition in the United States markets for the sale of the phenoxy herbicides: MCPA, MCPP-P, and 2,4DB.

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw from the proposed Consent Agreement, modify it, or make final the Consent Agreement's proposed Decision and Order.

II. The Products and Structure of the Markets

With its acquisition of A.H. Marks, Nufarm obtained monopoly positions in the United States markets for two phenoxy herbicide markets (MCPA and MCPP-p) and reduced a third phenoxy herbicide market (2,4DB) to a duopoly. Phenoxy herbicides are post-emergent selective broadleaf herbicides which are designed to act on full or partially grown weeds without damaging surrounding plants. They are used widely in the turf, lawn care, and agriculture industries to eliminate existing broadleaf weeds safely and cheaply. Nufarm and A.H. Marks sold these herbicides to agricultural and turf and lawn care formulators in their raw form as "technical" ingredients for their formulated herbicide products. Agricultural formulators generally purchase MCPA for use on cereal crops, such as wheat and barley, and 2,4DB for peanut and alfalfa crops. Turf and lawn care formulators purchase MCPP-p for turf care products used by landscape professionals or consumers. Each of the three herbicides is a highly cost-effective herbicide for its intended use with no equivalent substitutes. More expensive herbicides are generally used as complements and combined with phenoxy herbicides such as MCPA, MCPP-p, or 2,4DB, to increase the effectiveness of formulated herbicide products.

III. Entry

Entry into the markets for MCPA, MCPP-p and 2,4DB would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the acquisition. In order to obtain approval to sell herbicides for use on crops, turf, or lawns in the United States, the Environmental Protection Agency ("EPA") requires manufacturers to submit extensive environmental and toxicology testing data. Herbicide manufacturers often generate such data by forming industry task forces to share the costs of testing. Later entrants are often required to compensate members of the task force to obtain intellectual property rights to existing testing data by either purchasing the rights to the data or obtaining a seat on the task force. The costs associated with obtaining either the testing data or a task force seat to enter the markets for MCPA, MCPP-p, and 2,4DB are high compared to the limited potential sales revenues available to an entrant in each of these markets. Additionally, obtaining EPA approval for the manufacture and sale of each of the relevant products can take several years due to the presence of regulatory barriers. As a result, entry into each relevant market would require substantial sunk costs that would make entry unattractive. In addition, prior to the acquisition, Nufarm had entered into contracts with several of its task force members which posed barriers to entry by these firms. Therefore, the prospect of entry into the relevant markets is very limited and does not alleviate the concerns about the adverse competitive effects of the acquisition.

IV. Effects of the Acquisition

The acquisition is likely to cause significant competitive harm to consumers in the relevant U.S. markets for MCPA, MCPP-p, and 2,4DB by eliminating the direct and substantial competition between Nufarm and A.H. Marks. There is evidence that Nufarm acquired A.H. Marks with the expectation that it would be able to increase prices as a result of the merger. In addition, the evidence indicated that in some instances Nufarm may have increased its prices for the three

herbicides following the merger. As a result, the transaction increased the likelihood that Nufarm could unilaterally exercise market power and raise prices in each of the relevant markets.

V. Terms of the Proposed Decision and Order

The Consent Agreement preserves competition in each of the relevant markets alleged in the complaint by requiring that Nufarm divest certain A.H. Marks assets to new entrants and take additional measures to restore competition in the markets for MCPA, MCPP-p, and 2,4DB. Specifically, Nufarm has agreed to sell A.H. Marks' EPA registration and task force seat for MCPA to Albaugh Inc., and A.H. Marks' EPA registration and task force seat for MCPP-p to PBI Gordon Corp. Nufarm has also agreed to modify its contractual agreements with Dow and Aceto relating to MCPA and 2.4-DB, which restricted these firms' competitive activities in the markets for MCPA and 2,4-DB. Staff has evaluated the proposed divestitures and modifications and concluded that these measures are sufficient to remedy the anticompetitive effects resulting from the transaction.

For both MCPA and MCPP-p, the purchase of a task force seat and EPA registration will permit each divestiture purchaser to enter and compete in these markets. By acquiring A.H. Mark's task force seat and EPA registration, the divestiture purchasers will obtain EPA approval to distribute the herbicide in the United States and certify additional manufacturing sources of the herbicides. In addition to the task force seat and EPA registration, Nufarm is required to enter into supply agreements with each divestiture purchaser to permit these purchasers to compete with Nufarm as wholesale suppliers of the herbicides while new manufacturing sources are developed.

With respect to MCPA, Nufarm would divest AH Mark's MCPA Task Force Seat and EPA registrations relating to MCPA to Albaugh. Albaugh is a qualified divestiture candidate that is uniquely situated to use the A.H. Marks assets and supply contract to compete with Nufarm in the market for MCPA. Albaugh is the largest privately-owned formulator of crop protection products. Albaugh is headquartered in Ankeny, Iowa and sells exclusively in the United States. Within the crop protection industry, Albaugh has extensive relationships with firms at every level of distribution. Given Albaugh's position, commitment, and experience in the MCPA market, staff believes that divestiture of A.H. Marks' MCPA assets will enable Albaugh to restore the competition lost as a result of the transaction.

With respect to MCPP-p, Nufarm would divest A.H. Mark's MCPP-p Task Force Seat and EPA registrations relating to MCPP-p to PBI Gordon and enter a three-year supply arrangement. PBI Gordon, headquartered in Kansas City, Missouri, is a privately held company founded in 1947. PBI Gordon is a long-standing player in the turf care industry. Its primary business is the development, manufacture, and marketing of herbicides, pest management, and related products to the lawn, garden, professional turf, and specialty agricultural markets. It has an extensive distribution network and a wide customer base. PBI Gordon's presence in the market, combined with its expertise with herbicides, will ensure it will use the assets to compete with Nufarm in the market for MCPP-p.

The Consent Agreement also addresses concerns regarding Nufarm's agreements with Dow and Aceto by preventing Nufarm from enforcing agreements which may limit or restrict competitive entry in the MCPA and 2,4DB markets. Pursuant to Section V of the proposed Decision and Order, Nufarm agreed not to enforce any provision, or otherwise take any future action, restricting competition in the manufacture or sale of MCPA, 2,4DB or MCPP-p. Nufarm's compliance with these provisions will enable Dow and Aceto to enter these respective markets, as manufacturers and/or wholesalers, and compete with Nufarm for sales. Equally important, Dow and Aceto will be able to use their task force seats and registrations to sponsor new entrants to the United States markets for these herbicides. The resulting entry, or threat of entry, is likely to serve as an additional competitive constraint in both the MCPA and 2,4DB markets. Lastly the Consent Agreement contains several other significant provisions. Section IV of the proposed Order permits Nufarm's customers to terminate their contracts with Nufarm with respect to the products. Section VII requires Nufarm to notify the Commission if it: (a) acquires any task force seat or registration with respect to the products or (b) enters into any agreements with task force members or registrants that contain non-compete, joint-marketing or other provisions restricting competition. Section VIII requires Nufarm to divest the MCPA and MCPP-p assets to a trustee in the event Nufarm fails to comply with the divestiture obligations for these assets in the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.

By direction of the Commission, Commissioner Ramirez recused.

Donald S. Clark

Secretary.

[FR Doc. 2010–19079 Filed 8–3–10; 7:33 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–10AA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Occupational Safety and Health Professional Workforce Assessment: Employer and Education Provider Survey Data Collection—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the NIOSH is to generate new knowledge in the field of occupational safety and health (OS&H) and to transfer that knowledge into practice for the betterment of workers. Developing and supporting a new generation of practitioners is critical to the future of occupational safety and health. As part of its mission to increase safety and protect worker health, NIOSH funds programs to support occupational safety and health education through 17 regional university-based Education and Research Centers and 31 Training Project grants that train occupational safety and health professionals to meet

the increasing demand for these professionals.

Because of this central role NIOSH plays in the education and training of OS&H workers and because of the continually changing nature of the workplace, over the last 38 years NIOSH has sponsored 3 OS&H workforce assessments. These were conducted in 1977 and 1985 by NIOSH; and, in 2000 the Institute of Medicine conducted a workforce assessment at NIOSH's request. NIOSH is planning to perform another assessment to examine the current and anticipated future professional OS&H workforce. The assessment will attempt to collect information from two groups—employers of OS&H professionals and providers of training programs for OS&H professionals.

The information collected from employers will concern the current supply and future demand for OS&H professionals; and the desired professional competencies (*i.e.,* knowledge, skills, and abilities) required for the coming decade.

To ensure that the overall proposed methodology for collecting information from employers is successful in collecting the information required, we will conduct a phase I study with a small group of employers. Should any needed methodological changes be identified, NIOSH will submit a request for modification to OMB. If no substantive methodological changes are required, the phase II study will proceed and the phase I data will be included in the phase II study data set. It is expected that approximately 744 employers will have to be screened in Phase I and 6,681 in Phase II to yield approximately 400 employer responses (40 in the employer phase I, 360 in the employer phase II study).

The initial step in the study of employers will be to sample the total number of establishments needed for screening. The phase I portion of employers then will be conducted using approximately 744 of the establishments sampled and the following methodology:

- A telephone screening to identify employers of OS&H professionals will be conducted. During the screening to identify employers of OS&H professionals we will also obtain contact information for the most appropriate respondent(s).
- A letter will be mailed to all eligible phase I establishments describing the study, inviting them to participate, and providing web access information.
- Data collection then will be primarily by web questionnaire. After two weeks, all non-respondents will receive a special delivery service envelope containing another copy of the invitation letter. Two weeks later, telephone contact with non-respondents will begin. Up to 7 attempts to contact each potential respondent by telephone will be made. (When contact is made, respondents will be encouraged to complete the questionnaire on the web or by telephone at that time.)

Assuming no methodological changes result from the phase I study, the phase II employer study then will begin with telephone screening of an additional 6,681 establishments. The data collection methodology will be identical to that described for the phase I study of employers.

The study of educational providers will be a census of the approximately 400 educational providers identified and listed as part of this effort. There will be no sampling or screening activities. The information collected will be similar to that collected from employers. Beginning with the invitation letter, the data collection methodology for educational providers will be identical to that of the phase II study of the employers. We expect 180 educational providers to respond to either the Web or telephone questionnaire.

There is no cost to any respondents other than their time. The total estimated annual burden hours are 898.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Average number of responses per respondent	Average burden per response in hours
Employer	Employer Screening	7425	1	5/60
Employer	Employer Questionnaire (Web or Telephone)	400	1	32/60
Provider	Provider Questionnaire (Web or Telephone)	180	1	22/60

Dated: July 29, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–19108 Filed 8–3–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Registration for Behavioral Health Web Site and Resources—NEW

SAMHSA is authorized under section 501(d)(16) of the Public Health Service Act (42 U.S.C. 290aa(d)(16)) to develop and distribute materials for the prevention, treatment, and recovery from substance abuse and mental health disorders. To improve the way the public locates and obtains these materials, SAMHSA is integrating the National Clearinghouse for Alcohol and Drug Information (NCADI) and the National Mental Health Information Center (NMHIC) into one online resource for behavioral health information. A part of building this new product Web site is SAMHSA's development of a voluntary registration process that will allow customers to create accounts that will save their order histories and shipping addresses. During the Web site registration process, SAMHSA will also ask customers for optional demographic information that will include organization affiliation, SAMHSA grantee identification information, and reasons for interest in behavioral health information. SAMHSA will use this information to conduct customer analyses that will inform materials development, assist in forecasting inventory needs, and identify ways that SAMHSA can improve its customer service. SAMHSA will request the same optional

demographic information and state of residency when customers subscribe to its email update service, for the purpose of assessing information needs and better targeting email messages to appropriate audiences.

SAMHSA is employing a Web-based form for information collection to avoid duplication and unnecessary burden on customers who register both for an account on the product Web site and for e-mail updates. The Web technology allows SAMHSA to integrate the email update subscription process into the Web site account registration process. Customers who register for an account on the new product Web site will be given the option of being enrolled automatically to receive SAMHSA email updates. Any optional questions answered by the customer during the Web site registration process will automatically be mapped to the profile generated for the e-mail update system, thereby reducing the collection of duplicate information.

SAMHSA will collect all customer information submitted for Web site registration and email update subscriptions electronically via a series of Web forms on the samhsa.gov domain. Customers can submit the Web forms at their leisure, or call SAMHSA's toll-free Call Center and an information specialist will submit the forms on their behalf. The electronic collection of information will reduce the burden on the respondent and streamline the data-capturing process. SAMHSA will place Web site registration information into a Knowledge Management database and will place email subscription information into a database maintained by a third-party vendor that serves multiple Federal agencies and the White House. Customers can change, add, or delete their information from either system at any time.

The respondents will be behavioral health professionals, researchers, parents, caregivers, and the general public.

SAMHSA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Web Site Registration	41,200	1	41,200	.033 (2 min.)	1,360
Email Update Subscription	24,000	1	24,000	.017 (1 min.)	480
Total	65,200		65,200		1,840

Written comments and recommendations concerning the proposed information collection should be sent by September 3, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: July 27, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–19118 Filed 8–3–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Scholarships for Disadvantaged Students (SDS) Program (OMB No. 0915–0149)—Extension

The Scholarships for Disadvantaged Students (SDS) Program has as its purpose, the provision of funds to eligible schools to provide scholarships to full-time, financially needy students from disadvantaged backgrounds enrolled in health professions and nursing programs.

To qualify for participation in the SDS program, a school must be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups (Section 737(d)(1)(B) of the Public Health Service (PHS) Act). A school must meet the eligibility criteria to demonstrate that the program has achieved success based on the number and/or percentage of disadvantaged students who graduate from the school. In awarding SDS funds to eligible schools, funding priorities must be given to schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities (Section 737(c) of the PHS Act).

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application	600	1	600	13	7,800

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Report	600	1	600	1	600
Total	600	1	600	14	8,400

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: July 28, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–19121 Filed 8–3–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; the Drug Accountability Record (Form NIH 2564) (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Drug Accountability Record (Form NIH 2564) (OMB No. 0925–0240). *Type of Information Collection Request:* Extension with changes. *Need and Use of Information Collection:* The Food and Drug Administration (FDA) regulations require investigators to establish a record of receipt, use and disposition of all investigational agents. The National Cancer Institute (NCI), as a sponsor of investigational agent trials, has the responsibility to assure the FDA that investigators in its clinical trials program are maintaining systems for agent accountability. In order to fulfill these requirements, a standard Investigational Drug Accountability Report Form (DARF) NIH–2564, was designed to account for agent inventories and usage by protocols. The data obtained from the agent accountability record will be used to keep track of the dispensing of investigational agent anticancer agents to patients. It is used by the NCI management to ensure that investigational agent supplies are not diverted for inappropriate protocol or patient use. The information is also compared to patient flow sheets (protocol reporting forms) during site visits conducted for each investigator every three years. All comparisons are done with the intention of ensuring protocol, patient and agent compliance for patient safety and protection. *Frequency of Response:* Approximately 16 times per year. *Affected Public:* Private sector including businesses, other for-profit organizations, and non-profit institutions. *Type of Respondents:* Investigators, pharmacists, nurses, pharmacy technicians, and data managers. The annualized respondents' burden for record keeping is estimated to require 6,714 hours (Table 1). There are no capital costs, operating costs, or maintenance costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual burden hours
Investigators, or Designees	4,196	16	6/60 (0.1)	6,714

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Charles, Hall, RPh, M.S., Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, National Cancer Institute, Executive Plaza North, Room 7149, 9000 Rockville Pike, Bethesda, Maryland 20891. Or call non-toll-free number 301–496–5725 or e-mail your request, include your address to: *hallch@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: July 28, 2010.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–19158 Filed 8–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Multi-Ethnic Study of Atherosclerosis (MESA) Event Surveillance

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the

National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Multi-Ethnic Study of Atherosclerosis (MESA) Event Surveillance. *Type of Information Request:* Renewal (OMB No. 0925–0493). *Need and Use of Information Collection:* The study, MESA, is identifying and quantifying factors associated with the presence and progression of subclinical cardiovascular disease (CVD)—that is, atherosclerosis and other forms of CVD that have not produced signs and symptoms. The findings provide important information on subclinical CVD in individuals of different ethnic backgrounds and provide information for studies on new interventions to prevent CVD. The aspects of the study that concern direct participant evaluation received a clinical exemption from OMB clearance (CE–99–11–08) in April 2000. OMB clearance is being sought for the contact of physicians and participant proxies to obtain information about clinical CVD events that participants experience during the follow-up period. *Frequency of response:* Once per CVD event. *Affected public:* Individuals. *Types of Respondents:* Physicians and selected proxies of individuals recruited for MESA. The annual reporting burden is as follows: *Estimated Number of Respondents:* 74; *Estimated Number of Responses per respondent:* 1.0; *Average Burden Hours Per Response:* 0.20; *and Estimated Total Annual Burden Hours Requested:* 14.7.

There are no capital, operating, or maintenance costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Physicians	17	1.0	0.20	3.4
Proxies	57	1.0	0.20	11.3
Total	74	1.0	0.20	14.7

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information will have practical utility; (2) The accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information: To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Diane Bild, Division of Cardiovascular Sciences, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, Suite 10122, MSC # 7936, Bethesda, MD 20892–7936, or call non-toll-free number (301) 435–0457, or e-mail your request, including your address to: *bildd@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 27, 2010.

Suzanne Freeman,

NHLBI Project Clearance Liaison, National Institutes of Health.

Michael Lauer,

Director, DCVS, National Institutes of Health.

[FR Doc. 2010–19164 Filed 8–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Assessing the Long-Term Impacts of the John E. Fogarty International Center's Research and Training Programs

Summary: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the John E. Fogarty International Center, the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Assessing the Long-Term Impacts of the John E. Fogarty International Center's Research and Training Programs.

Type of Information Collection Request: New collection.

Need and Use of Information Collection: This study will inform investment decisions and strategies employed by the Fogarty International Center for the purpose of strengthening biomedical research capacity in low and middle income countries. The primary objective of the study is to develop detailed case studies of the long-term impacts of Fogarty's research and training programs on educational institutions located in low and middle income countries. The findings will provide valuable information concerning return on the Center's investments over the past twenty years and effective strategies for promoting research capacity development in the future.

Frequency of Response: Once.

Affected Public: Individuals.

Type of Respondents: Current and former NIH grantees; Current and former NIH trainees in countries of interest; Leaders and administrators at institutions of interest; Policy-makers and scientific leaders in countries of interest.

Estimated Number of Respondents: 105 per institution; total of 10 institutions over five years.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours per Response: 1 hour for interview participants; 2 hours for focus group participants.

Estimated Total Annual Burden Hours Requested: 290, and the annualized cost to respondents is estimated at $4,841.

There are no Capital Costs to report.
There are no Operating or Maintenance Costs to report.

	Number of respondents/ participants per institution	Number of institutions per year	Number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Interviews with US-based principal investigators	20	2	1	1	40
Focus groups with selected trainees and follow-on survey	40	2	1	2	160
Interviews with university leadership	4	2	1	1	8
Interviews with trainees	13	2	1	1	26
Interviews with foreign grantees	20	2	1	1	40
Interviews with foreign policy-makers/scientific leaders	8	2	1	1	16
Total	105				290

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Linda Kupfer, Fogarty International Center, National Institutes of Health, 16 Center Drive, Bethesda, MD 20892, or call non-toll-free number 301–496–3288, or e-mail your request, including your address to: *kupferl@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: July 22, 2010.

Timothy J. Tosten,

Executive Officer, John E. Fogarty International Center, National Institutes of Health.

[FR Doc. 2010–19160 Filed 8–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Secretary's Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Secretary's Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: September 16, 2010, 8:30 a.m. to 5 p.m., September 17, 2010, 8:30 a.m. to 3:30 p.m.

Place: Marriott Washington at Metro Center, 775 12th Street, NW., Washington, DC 20005.

Status: The meeting will be open to the public with attendance limited to space availability. Participants are asked to register for the meeting by going to the registration Web site at *http://altarum.cvent.com/event/achdnc2010.* The registration deadline is Tuesday, September 14, 2010. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations should indicate their needs on the registration Web site. The deadline for special accommodation requests is Friday, September 10, 2010. If there are technical problems gaining access to the Web site, please contact Maureen Ball, Meetings Coordinator at *conferences@altarum.org.*

Purpose: The Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (Advisory Committee) was established to advise and guide the Secretary regarding the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders. The Advisory Committee also provides advice and recommendations concerning the grants and projects authorized under the Public Health Service Act, 42 U.S.C. 300b–10, (Heritable Disorders Program) as amended in the Newborn Screening Saves Lives Act of 2008.

Agenda: The meeting will include: (1) A presentation of the External Review Workgroup's final report on the nomination of Critical Cyanotic Congenital Heart Disease and draft report on the nomination of Hyperbilirubinemia to the Advisory Committee's recommended uniform screening panel; (2) a discussion of the Advisory Committee's final draft of the report on the use and storage of newborn screening Residual Blood Spots; (3) an update on the report being developed by the Sickle Cell Disease Carrier Screening workgroup; and (4) presentations on the continued work and reports of the Advisory Committee's subcommittees on laboratory standards and procedures, follow-up and treatment, and education and training. Proposed Agenda items are subject to change as priorities dictate. You can locate the Agenda, Committee Roster and Charter, presentations, and meeting materials at the home page of the Advisory Committee's Web site at *http://www.hrsa.gov/heritabledisorderscommittee/.*

Public Comments: Members of the public can present oral comments during the public comment periods of the meeting, which are scheduled for both days of the meeting. Those individuals who want to make a comment are requested to register online by Tuesday, September 14, 2010 at *http://altarum.cvent.com/event/achdnc2010.* Requests will contain the name, address, telephone number, and any professional or business affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The list of public comment participants will be posted on the Web site. Written comments should be e-mailed no later than Tuesday, September 14, 2010 for consideration. Comments should be submitted to Maureen Ball, Meetings

Coordinator, Conference and Meetings Management, Altarum Institute, 1200 18th Street, NW., Suite 700, Washington, DC 20036, telephone: (202) 828–5100, fax: (202) 785–3083, or e-mail: *conferences@altarum.org.*

Contact Person: Anyone interested in obtaining other relevant information should contact Alaina M. Harris, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–0721, *aharris@hrsa.gov.* More information on the Advisory Committee is available at *http://mchb.hrsa.gov/heritabledisorderscommittee.*

Dated: July 29, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–19119 Filed 8–3–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1578–N]

Medicare Program; Listening Session Regarding Confidential Feedback Reports and the Implementation of a Value-Based Payment Modifier for Physicians, September 24, 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a listening session being conducted as part of the transition to a value-based purchasing program for services of physicians and certain other professionals, as well as other related provisions under the Patient Protection and Affordable Care Act (known as the Affordable Care Act (ACA)). This public law contains provisions that continue and expand the Physician Feedback Program and also require implementation of a value-based payment modifier to the fee-for-service physician fee schedule. The purpose of the listening session is to solicit comments on approaches being considered as we implement these provisions. Physicians, physician associations, and all others interested in the use of confidential feedback reports as one means of enhancing quality and efficiency are invited to participate, in person or by calling in to the teleconference. The meeting is open to the public, but attendance is limited to space and teleconference lines available. Background information, including the relevant preamble language from calendar year (CY) 2011 Physician Fee Schedule proposed rule will be posted on the CMS Web site at *http://www.cms.hhs.gov/center/physician.asp* approximately 1 week prior to the session.

DATES: *Meeting Date:* The listening session will be held on Friday, September 24th from 10 a.m. until 4 p.m. Eastern Daylight Time (e.d.t.)

Deadline for Meeting Registration and Request for Special Accommodations: Registration opens on July 30, 2010. Registration must be completed by 5 p.m. e.d.t. on September 22, 2010. Requests for special accommodations must be received by 5 p.m. e.d.t. on September 22, 2010.

Deadline for Submission of Written Comments or Statements: Written comments or statements may be sent via mail, fax, or electronically to the address specified in the **ADDRESSES** section of this notice and must be received by 5 p.m. e.d.t. on Monday, September 20, 2010.

ADDRESSES: *Meeting Location:* The listening session will be held in the main auditorium of the Central Building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Persons interested in attending the meeting or participating by teleconference must register by completing the on-line registration via the CMS Web site at *http://www.eventsvc.com/palmettogba/092410.* Individuals who require special accommodations should send an e-mail request to *pamela.cheetham@cms.hhs.gov* or via regular mail to Pamela Cheetham at the address specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Written Comments or Statements: Written comments or statements may be sent via e-mail to *PhysicianVBP@cms.hhs.gov,* faxed to 410–786–8005; or sent via regular mail to: *Attn:* Physician VBP Comments, Mail Stop C5–15–12, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

All persons planning to make a statement in person at the listening session are urged to submit statements in writing at the listening session and should subsequently submit the information electronically by the timeframe specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: For further information regarding the September 24, 2010 listening session contact Pamela Cheetham at (410) 786–2259. You may also send inquiries about this listening session via e-mail to *pamela.cheetham@cms.hhs.gov* or via regular mail at Centers for Medicare & Medicaid Services, Mail Stop C5–15–12, 7500 Security Boulevard, Baltimore, MD 21244–1850.

I. Background

Section 131(c) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) established the Physician Feedback Program that requires the Secretary to provide confidential feedback reports to physicians on resource use. Section 131(d) of MIPPA requires the Secretary to develop a plan for the transition to a value-based purchasing program for covered professional services.

The Affordable Care Act contains several provisions related to implementation of physician value-based purchasing (PVBP). Value-based purchasing is expected to create financial incentives for increasing quality of care and decreasing overall costs by transitioning to payment that will link levels of reimbursement to higher achievement of clinical quality and efficiency. Section 3003 of ACA continues and expands the Physician Feedback Program and requires the Secretary of Health and Human Services (the Secretary), beginning in 2012, to provide reports that compare patterns of resource use of individual physicians to other physicians. In addition, section 3007 of the ACA requires the Secretary to apply a budget-neutral payment modifier to the fee-for-service physician fee schedule beginning in 2015. During the listening session, we will discuss Phase I and Phase II of the Physician Feedback Program and outline the relevant sections of the ACA. Stakeholder input will be sought on a number of topics including but not limited to: report design and dissemination, cost and quality measures to assess performance, risk adjustment, attribution of Medicare beneficiaries to providers, benchmarking and peer groups, and composite measures of cost and quality.

Background information, including the relevant preamble language from CY 2011 Physician Fee Schedule proposed rule (75 FR 40113 through 40116) will be posted on the CMS Web site at *http://www.cms.hhs.gov/center/physician.asp* approximately 1 week prior to the session. The complete CY 2011 Physician Fee Schedule proposed rule appeared in the July 13, 2010, **Federal Register** (75 FR 40040) and is available at *http://edocket.access.gpo.gov/2010/pdf/2010-15900.pdf.* The

public comment period for this proposed rule ends August 24, 2010. Please note that in order to ensure the consideration of public comments for purposes of the CY 2011 Physician Fee Schedule final rule, comments must be submitted as directed in the proposed rule (*see* 75 FR 40040). The issues identified and discussed during this listening session, along with other comments we receive, will assist CMS in developing the future phases of the Physician Feedback Program as well as implementation of the value-based payment modifier.

II. Listening Session Format

The listening session will be held on September 24, 2010. The session will begin at 10 a.m. e.d.t. with an overview of the objectives for the session and a brief summary of the relevant value-based purchasing provisions of ACA. The agenda will provide opportunities for brief 2-minute comments from on-site session attendees. As time allows, telephone participants will also have the opportunity to provide comments that do not exceed 2-minutes. We will break for lunch from approximately 12:30 p.m. e.d.t. to 1:15 p.m. e.d.t. The meeting will conclude by 4 p.m. e.d.t. with brief comments on next steps.

III. Registration Instructions

For security reasons, any persons wishing to attend this meeting must register by the date listed in the **DATES** section of this notice. Persons interested in attending the meeting or participating by teleconference must register by completing the on-line registration via the designated Web site at *http://www.eventsvc.com/palmettogba/092410.* The on-line registration system will generate a confirmation page to indicate the completion of your registration. Please print this page as your registration receipt.

Individuals may also participate in the listening session by teleconference. Registration is required as the number of call-in lines will be limited. The call-in number will be provided upon confirmation of registration.

An audio download and transcript of the listening session will be available within two weeks after completion of the listening session through the CMS Web site Physician Center Spotlights at *http://www.cms.hhs.gov/center/physician.asp.*

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. The on-site check-in for visitors will begin at 9:15 a.m. e.d.t. Please allow sufficient time to complete security checkpoints.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building. Seating capacity is limited to the first 250 registrants.

Authority: Sections 3001 and 3007 of the Patient Protection and Affordable Care Act.

Dated: July 29, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–19128 Filed 8–3–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of 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 Board of Scientific Counselors, NIAAA.

The meeting 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 meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performances, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: September 1–2, 2010.

Open: September 1, 2010, 7:45 a.m. to 8 a.m.

Agenda: Public Session.

Place: National Institutes of Health, 5625 Fishers Lane, Bethesda, MD 20892.

Closed: September 1, 2010, 8 a.m. to 7 p.m.

Agenda: To review and evaluate the Laboratory for Integrative Neuroscience (LIN).

Closed: September 2, 2010, 8 a.m. to 2:15 p.m.

Agenda: To review and evaluate the Laboratory Molecular Physiology (LMP).

Place: National Institutes of Health, 5625 Fishers Lane, Bethesda, MD 20892.

Contact Person: Trish Scullion, Chief of Administration Branch, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 3061, Rockville, MD 20852, 301–443–6076.

Information is also available on the Institute's/Center's home page: *http://www.silk.nih.gov/silk/niaaa1/about/roster.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–19169 Filed 8–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 of Environmental Health Sciences Special Emphasis Panel, Gulf Oil Spill Health Effects.

Date: August 17, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 29, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–19168 Filed 8–3–10; 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: Neurodegeneration.

Date: August 26, 2010.

Time: 1 p.m. to 3 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: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892. (301) 435–4433. *behart@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Prevention.

Date: September 3, 2010.

Time: 2 p.m. to 5 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: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892. 301–435–1719. *ngkl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cardiovascular Disease Epidemiology.

Date: September 8, 2010.

Time: 12 p.m. to 2 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: Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892. 301–379–5632. *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR10–082: Shared Instrument Review.

Date: September 16, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Ping Fan, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892. 301–408–9971. *fanp@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Developmental Therapeutics Study Section.

Date: September 23–24, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892. (301) 408–9512. *gubanics@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biomaterials and Biointerfaces Study Section.

Date: September 29–30, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Steven J Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892. 301–435–2810. *zullost@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.

Date: September 30–October 1, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Anna L. Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892. 301–435–2889. *rileyann@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroscience and Neurodegeneration Study Section.

Date: September 30–October 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 237–9838. *bhagavas@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: September 30–October 1, 2010.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892. (301) 435–1045. *corsaroc@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Pathophysiological Basis of Mental Disorders and Addictions Study Section.

Date: September 30–October 1, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 120 E Lombard Street, Brookshire Suites, Baltimore, MD 21231.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892. (301) 435–1252. *cinquej@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: July 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–19167 Filed 8–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting 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 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 13–14, 2010.

Open: September 13, 2010, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Closed: September 13, 2010, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Closed: September 14, 2010, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531, *guyerm@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 29, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–19165 Filed 8–3–10; 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 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: Center for Scientific Review Special Emphasis Panel, Regulation of Monoamine Function—PPG Reviews.

Date: August 10–12, 2010.

Time: 8 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting.)

Contact Person: Peter B Guthrie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892. (301) 435–1239. *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–19163 Filed 8–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 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 Eye Institute Special Emphasis Panel; NEI Institutional Training Grant Applications.

Date: August 9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *aes@nei.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinician Scientist Grant Applications.

Date: August 23, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Natioanl Institutes of Health, NEI Division of Extramural Research, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anne E. Schaffner, PhD, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 28, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory, Committee Policy.

[FR Doc. 2010–19162 Filed 8–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): National Human Immunodeficiency Virus (HIV) Behavioral Surveillance, Funding Opportunity Announcement, PS11–001, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates:

8 a.m.–5 p.m., September 20, 2010 (Closed).

8 a.m.–5 p.m., September 21, 2010 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, Telephone: (770)997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "National HIV Behavioral Surveillance System, FOA PS11–001."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 27, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–19157 Filed 8–3–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 2, 2010, 1 p.m. to 5:30 p.m. EDT. September 3, 2010, 9 a.m. to 12:30 p.m. EDT.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, September 2 from 1 p.m. to 5:30 p.m. (EDT) and Friday, September 3 from 9 a.m. to 12:30 pm (EDT). The public can join the meeting via audio conference call by dialing 1–800–857–7178 on September 2 and 3 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the September meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice (DOJ), National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Public Comment: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, e-mail address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by e-mail, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. Public participation and ability to comment will be limited to space and time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *aherzog@hrsa.gov.*

Dated: July 29, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–19120 Filed 8–3–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0390]

Prescription Drug User Fee Rates for Fiscal Year 2011

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2011. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Prescription Drug User Fee Amendments of 2007 (Title 1 of the Food and Drug Administration

Amendments Act of 2007 (FDAAA)) (PDUFA IV), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Base revenue amounts to be generated from PDUFA fees were established by PDUFA IV, with provisions for certain adjustments. Fee revenue amounts for applications, establishments, and products are to be established each year by FDA so that one-third of the PDUFA fee revenues FDA collects each year will be generated from each of these categories. This notice establishes fee rates for FY 2011 for application fees for an application requiring clinical data ($1,542,000), for an application not requiring clinical data or a supplement requiring clinical data ($771,000), for establishment fees ($497,200), and for product fees ($86,520). These fees are effective on October 1, 2010, and will remain in effect through September 30, 2011. For applications and supplements that are submitted on or after October 1, 2010, the new fee schedule must be used. Invoices for establishment and product fees for FY 2011 will be issued in August 2010, using the new fee schedule.

FOR FURTHER INFORMATION CONTACT:

David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Picard Dr., PI50 RM210J, Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the act (21 U.S.C. 379g and 379h, respectively), establish three different kinds of user fees. Fees are assessed on the following: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (section 736(a) of the act). When certain conditions are met, FDA may waive or reduce fees (section 736(d) of the act).

For FY 2008 through FY 2012, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA IV. The base revenue amount for FY 2008 is to be adjusted for workload, and that adjusted amount becomes the base amount for the remaining 4 fiscal years. That adjusted base revenue amount is increased for drug safety enhancements by $10,000,000 in each of the subsequent 4 fiscal years, and the increased total is further adjusted each year for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will provide one-third of the total revenue to be collected each year.

This notice uses the fee base revenue amount for FY 2008 published in the **Federal Register** of October 12, 2007 (72 FR 58103), adjusts it for the FY 2010 and FY 2011 drug safety increases (see section 736(b)(4) of the act), for inflation, and for workload, and then establishes the application, establishment, and product fees for FY 2011. These fees are effective on October 1, 2010, and will remain in effect through September 30, 2011.

II. Fee Revenue Amount for FY 2011

The total fee revenue amount for FY 2011 is $619,070,000, based on the fee revenue amount specified in the statute, including additional fee funding for drug safety and adjustments for inflation and changes in workload. The statutory amount and a one-time base adjustment are described in sections II.A and II.B of this document. The adjustment for inflation is described in section II.C of this document, and the adjustment for changes in workload in section II.D of this document.

A. FY 2011 Statutory Fee Revenue Amounts Before Adjustments

PDUFA IV specifies that the fee revenue amount before adjustments for FY 2011 for all fees is $447,783,000 ($392,783,000 specified in section 736(b)(1) of the act plus an additional $55,000,000 for drug safety in FY 2011 specified in section 736(b)(4) of the act).

B. Base Adjustment to Statutory Fee Revenue Amount

The statute also specifies that $354,893,000 of the base amount is to be further adjusted for workload increases through FY 2007 (see section 736(b)(1)(B) of the act). The workload adjustment on this amount is to be made in accordance with the workload adjustment provisions that were in effect for FY 2007, except that the adjustment for investigational new drug (IND) workload is based on the number of INDs with a submission in the previous 12 months rather than on the number of new commercial INDs submitted in the same 12-month period. This adjustment was explained in detail in the **Federal Register** of October 12, 2007 (72 FR 58103). Increasing the statutorily specified amount of $354,893,000 by the specified workload adjuster (11.73 percent) results in an increase of $41,629,000, rounded to the nearest thousand. Adding this amount to the $447,783,000 statutorily specified amount from section II.A of this document, results in a total adjusted PDUFA IV base revenue amount of $489,412,000, before further adjustment for inflation and changes in workload after FY 2007.

C. Inflation Adjustment to FY 2011 Fee Revenue Amount

PDUFA IV provides that fee revenue amounts for each fiscal year after FY 2008 shall be adjusted for inflation. The adjustment must reflect the greater of the following amounts: (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the fiscal year for which fees are being set; (2) the total percentage pay change for the previous fiscal year for Federal employees stationed in the Washington, DC metropolitan area; or (3) the average annual change in cost, per full time equivalent (FTE) FDA position, of all personnel compensation and benefits paid for the first 5 of the previous 6 fiscal years. PDUFA IV provides for this annual adjustment to be cumulative and compounded annually after FY 2008 (see section 736(c)(1) of the act).

The first factor is the CPI increase for the 12-month period ending in June 2010. The CPI for June 2010 was 217.965 and the CPI for June 2009 was 215.693. (These CPI figures are available on the Bureau of Labor Statistics Web site at *http://data.bls.gov/cgi-bin/surveymost?bls* by checking the first box under "Price Indexes" and then clicking "Retrieve Data" at the bottom of the page.) (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) The CPI for June 2010 is 1.053 percent higher than the CPI for the previous 12-month period.

The second factor is the increase in pay for the previous fiscal year (FY 2010 in this case) for Federal employees stationed in the Washington, DC metropolitan area. This figure is published by the Office of Personnel Management, and found on their Web site at *http://www.opm.gov/oca/10tables/html/dcb.asp* above the salary table. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) For FY 2010 it was 2.42 percent.

The third factor is the average change in FDA cost for compensation and benefits per FTE over the previous 5 of the most recent 6 fiscal years (FY 2004 through 2009). The data on total compensation paid and numbers of FTE

paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees. Table 1 of this document summarizes that actual cost and FTE use data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the most 5 recent fiscal years, which is 4.53 percent.

TABLE 1.—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal Year	2005	2006	2007	2008	2009	Annual Average Increase for Latest 5 Years
Total PC&B	$1,077,604	$1,114,704	$1,144,369	$1,215,627	$1,464,445	
Total FTE	9,910	9,698	9,569	9811	11,413	
PC&B per FTE	$108,739	$114,942	$119,591	$123,905	$128,314	
% Change from Previous Year	5.75%	5.70%	4.05%	3.61%	3.56%	4.53%

The inflation increase for FY 2011 is 4.53 percent. This is the greater of the CPI change during the 12-month period ending June 30 preceding the fiscal year for which fees are being set (1.053 percent), the increase in pay for the previous fiscal year (FY 2010 in this case) for Federal employees stationed in the Washington, DC metropolitan area (2.42 percent), and the average annual change in cost, per FTE FDA position, of all personnel compensation and benefits paid for the first 5 of the previous 6 fiscal years (4.53 percent). Because the average change in pay per FTE (4.53 percent) is the highest of the three factors, it becomes the inflation adjustment for total fee revenue for FY 2011.

The inflation adjustment for FY 2009 was 5.64 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the fiscal year for which fees were being set (June 30, 2008, which was 5.05 percent), the increase in pay for FY 2008 for Federal employees stationed in Washington, DC (4.49 percent), or the average annual change in cost, per FTE FDA position, of all personnel compensation and benefits paid for the first 5 of the previous 6 fiscal years (5.64 percent).

The inflation adjustment for FY 2010 was 5.54 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the fiscal year for which fees were being set (June 30, 2009) (negative 1.43 percent), the increase in pay for FY 2009 for Federal employees stationed in Washington, DC (4.78 percent), or the average annual change in cost, per FTE FDA position, of all personnel compensation and benefits paid for the first 5 of the previous 6 fiscal years (5.54 percent).

PDUFA IV provides for this inflation adjustment to be cumulative and compounded annually after FY 2008 (see section 736(c)(1) of the act). This factor for FY 2011 (4.53 percent) is compounded by adding one to it and then multiplying it by one plus the inflation adjustment factor for FY 2010 (5.54 percent) and by one plus the inflation adjustment factor for FY 2009 (5.64 percent). The result of this multiplication of the inflation factors for the 3 years since FY 2008 (1.04.53 times 1.0554 times 1.0564 percent) becomes the inflation adjustment for FY 2011. This inflation adjustment for FY 2010 is 16.54 percent.

Increasing the FY 2011 fee revenue base of $489,412,000, by 16.54 percent yields an inflation-adjusted fee revenue amount for FY 2011 of $570,371,000, rounded to the nearest thousand dollars, before the application of the FY 2011 workload adjustment.

D. Workload Adjustment to the FY 2010 Inflation Adjusted Fee Revenue Amount

PDUFA IV does not allow FDA to adjust the total revenue amount for workload beginning in FY 2010 unless the independent accounting firm study is complete (see section 736(c)(2)(C) of the act). That study, conducted by Deloitte Touche, LLP, was completed on March 31, 2009, and is available online at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm164339.htm* . The study found that the adjustment methodology used by FDA reasonably captures changes in workload for reviewing human drug applications under PDUFA IV. Accordingly, FDA continues to use the workload adjustment methodology prescribed in PDUFA IV.

For each fiscal year beginning in FY 2009, PDUFA IV provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see section 736(c)(2) of the act). PDUFA IV continues the PDUFA III workload adjustment with modifications, and provides for a new additional adjustment for changes in review activity.

FDA calculated the average number of each of the four types of applications specified in the workload adjustment provision: (1) Human drug applications, (2) active commercial INDs (applications that have at least one submission during the previous 12 months), (3) efficacy supplements, and (4) manufacturing supplements received over the 5-year period that ended on June 30, 2007 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2010.

The calculations are summarized in table 2 of this document. The 5-year averages for each application category are provided in Column 1 ("5-Year Average Base Years 2002–2007") and Column 2a ("5 Year Average 2006–2010").

PDUFA IV specifies that FDA make additional adjustments for changes in review activities to the first two categories (human drug applications and active commercial INDs). These adjustments, specified under PDUFA IV, are summarized in columns 2b and 2c in table 2 of this document. The number in the NDAs/BLAs line of column 2b of table 2 of this document is the percent by which the average workload for meetings, annual reports, and labeling supplements for NDAs and BLAs has changed from the 5-year period 2002 through 2007 to the 5-year period 2006 through 2010. Likewise, the number in the "Active commercial INDs" line of column 2b of table 2 of this document is the percent by which the workload for meetings and special protocol assessments for active commercial INDs has changed from the 5-year period 2002 through 2007 to the 5-year period 2006 through 2010. There is no entry in the last two lines of column 2b because

the adjustment for changes in review workload does not apply to the workload for efficacy supplements and manufacturing supplements.

Column 3 of table 2 of this document reflects the percent change in workload from column 1 to column 2c. Column 4 shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. Column 5 of table 2 of this document is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 2 of this document is the sum of the values in column 5 that are added, reflecting an increase in workload of 8.54 percent for FY 2011 when compared to the base years.

TABLE 2.—WORKLOAD ADJUSTER CALCULATION FOR FY 2011

Application Type	Column 1	Column 2a	Column 2b	Column 2c	Column 3	Column 4	Column 5
	5-Year Average Base Years 2002–2007	5-Year Average 2006–2010	Adjustment for Changes in Review Activity	is Column 2a increased by Column 2b	Percent Change (Column 1 to Column 2c)	Weighting Factor	Weighted Percent Change
NDAs/BLAs	123.8	134.8	-0.49%	134.1	8.4%	33.9%	2.83%
Active commercial INDs	5,528.2	6320.0	-1.60%	6218.7	12.5%	43.7%	5.46%
Efficacy Supplements	163.4	164.4	NA	164.4	0.6%	9.6%	0.06%
Manufacturing Supplements	2589.2	2628.6	NA	2628.6	1.5%	12.8%	0.19%
FY 2011 Workload Adjuster							8.54%

The 2011 workload adjuster reflected in the calculations in table 3 of this document is 8.54 percent. Therefore the inflation-adjusted revenue amount of $570,376,000 from section II.C of this document will be increased by the 2011 workload adjuster of 8.54 percent, resulting in a total adjusted revenue amount in FY 2011 of $619,070,000, rounded to the nearest thousand dollars.

While the fee revenue amount anticipated in FY 2011 is $619,070,000, as the previous paragraph shows, FDA assumes that the fee appropriation for FY 2011 will be 5 percent higher, or $650,024,000, rounded to the nearest thousand dollars. The PDUFA IV 5-Year Financial Plan, (which can be found at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm153456.htm*) states in Assumption 14 (Fee Revenue and Annual Appropriation Amount) that the PDUFA workload adjuster is a lagging adjustment dampened by averages over 5 years and will not help FDA keep up with workload if there are sudden increases in the number of applications to be reviewed in the current fiscal year. Appropriated amounts for PDUFA fee revenue each year are estimated at 5 percent higher than estimated fee revenues for each year, to provide FDA with the ability to cope with surges in application review workload should that occur. If FDA collects less than the fee estimate at the beginning of the year and less than the fee appropriation, then collections rather than appropriations set the upper limit on how much FDA may actually keep and spend. If, however, FDA collects more than fee estimates at the beginning of the year, due to a workload surge, a slightly higher fee appropriation will permit FDA to keep and spend the higher collections in order to respond to a very real surge in review workload that caused the increased collections—an unexpected increase in the number of applications that FDA must review in accord with PDUFA goals. For this reason, in most fiscal years since 1993, actual appropriations have slightly exceeded PDUFA fee revenue estimates made each year.

E. Rent and Rent-Related Adjustment to the FY 2011 Adjusted Fee Revenue Amount

PDUFA specifies that for FY 2010 and each subsequent fiscal year, the revenue amount will be decreased if the actual cost paid for rent and rent-related expenses for preceding fiscal years are less than estimates made for such fiscal years in FY 2006 (see section 736(c)(3) of the act). The only fiscal years which have been completed, and for which FDA has data at this time, are FY 2008 and FY 2009. Table 3 of this document shows the estimates of rent and rent-related costs for FY 2008 and FY 2009 made in 2006 and the actual costs for these two fiscal years.

TABLE 3.—COMPARISON OF ACTUAL AND ESTIMATED RENT AND RENT-RELATED EXPENSES FOR THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER) AND THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)

	Estimates Made in 2006			Actual Costs at Fiscal Year End		
	FY 2008	FY 2009	Total	FY 2008	FY 2009	Total
CDER	$46,732,000	$40,415,000	$87,147,000	$51,619,000	$64,687,250	$116,306,250
CBER	$22,295,000	$23,067,000	$45,362,000	$26,715,000	$26,966,750	$53,681,750
Total	$69,027,000	$63,482,000	$132,509,000	$78,334,000	$91,654,000	$169,988,000

Because FY 2008 and FY 2009 costs for rent and rent-related items in total ($69,988,000) exceeded the estimates of these costs made in 2006 ($132,509,000), no decrease in the FY 2011 estimated PDUFA revenues is required under this provision of PDUFA.

PDUFA specifies that one-third of the total fee revenue is to be derived from application fees, one-third from establishment fees, and one-third from product fees (see section 736(b)(2) of the act). Accordingly, one-third of the total revenue amount ($619,070,000), i.e., $206,356,667, is the total amount of fee revenue that will be derived from each of these fee categories.

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate one-third of the total fee revenue amount, or $206,356,667, in FY 2011, as calculated previously in this document.

B. Estimate of Number of Fee-Paying Applications and Establishment of Application Fees

For FY 2008 through FY 2012, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next fiscal year by averaging the number of fee-paying FAEs received in the 5 most recent fiscal years. This use of the rolling average of the 5 most recent fiscal years is the same method that has applied for the last 7 years.

In estimating the number of fee-paying FAEs that FDA will receive in FY 2011, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for FY 2006 through FY 2010. For FY 2010, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months, as we have done for the past 8 years.

Table 4 of this document shows, in column 1, the total number of each type of FAE received in the first 9 months of FY 2010, whether fees were paid or not. Column 2 shows the number of FAEs for which fees were waived or exempted during this period, and column 3 shows the number of fee-paying FAEs received through June 30, 2010. Column 4 estimates the 12-month total fee-paying FAEs for FY 2010 based on the applications received through June 30, 2010. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount.

TABLE 4.—FY 2010 FULL APPLICATION EQUIVALENTS RECEIVED THROUGH JUNE 30, 2010, AND PROJECTED THROUGH SEPTEMBER 30, 2010

	Column 1	Column 2	Column 3	Column 4
	Total Received Through 6/30/2010	Fees Exempted or Waived Through 6/30/2010	Total Fee Paying Through 6/30/2010	12-Month Fee Paying Projection
Applications requiring clinical data	59	17	42	56
Applications not requiring clinical data	14	5.5	8.5	11.33
Supplements requiring clinical data	43.5	6.5	37	49.33
Withdrawn or refused to file	1.25	0.625	06.25	0.83
Total	117.75	29.625	88.125	117.5

In the first 9 months of FY 2009, FDA received 117.75 FAEs, of which 88.125 were fee-paying. Based on data from the last 10 fiscal years, on average, 25 percent of the applications submitted each year come in the final 3 months. Dividing 88.125 by 3 and multiplying by 4 extrapolates the amount to the full 12 months of the fiscal year and projects the number of fee-paying FAEs in FY 2010 at 117.5.

As table 5 of this document shows, the average number of fee-paying FAEs received annually in the most recent 5-year period, and including our estimate for FY 2010, is 133.8 FAEs. FDA will set fees for FY 2011 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 5.—FEE-PAYING FAE 5-YEAR AVERAGE

Fiscal Year	2006	2007	2008	2009	2010 est.	5-Year Average
Fee-Paying FAEs	136.7	134.4	140.0	140.3	117.5	133.8

The FY 2011 application fee is estimated by dividing the average number of full applications that paid fees over the latest 5 years, 133.8, into the fee revenue amount to be derived from application fees in FY 2011, $206,356,667. The result, rounded to the nearest $100, is a fee of $1,542,000 per full application requiring clinical data, and $771,000 per application not requiring clinical data or per supplement requiring clinical data.

IV. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2010, the establishment fee was based on an estimate that 415 establishments would be subject to, and would pay, fees. By

the end of FY 2010, FDA estimates that 445 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA estimates that a total of 15 establishment fee waivers or reductions will be made for FY 2010. In addition, FDA estimates that another 15 full establishment fees will be exempted this year based on the orphan drug exemption in FDAAA (see section 736(k) of the act). Subtracting 30 establishments (15 waivers plus the estimated 15 establishments under the orphan exemption) from 445 leaves a net of 415 fee-paying establishments. FDA will use 415 for its FY 2011 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($206,356,667) by the estimated 415 establishments, for an establishment fee rate for FY 2011 of $497,200 (rounded to the nearest $100).

B. Product Fees

At the beginning of FY 2010, the product fee was based on an estimate that 2,380 products would be subject to and would pay product fees. By the end of FY 2010, FDA estimates that 2,460 products will have been billed for product fees, before all decisions on requests for waivers, reductions, or exemptions are made. FDA assumes that there will be about 50 waivers and reductions granted. In addition, FDA estimates that another 25 product fees will be exempted this year based on the orphan drug exemption in FDAAA (see section 736(k) of the act). FDA estimates that 2,385 products will qualify for product fees in FY 2010, after allowing for waivers and reductions, including the orphan drug products eligible under the FDAAA exemption, and will use this number for its FY 2011 estimate. Accordingly, the FY 2011 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($206,356,667) by the estimated 2,385 products for a FY 2011 product fee of $86,520 (rounded to the nearest $10).

V. Fee Schedule for FY 2011

The fee rates for FY 2011 are set out in table 6 of this document:

TABLE 6—FEE SCHEDULE FOR FY 2011

Fee Category	Fee Rates for FY 2011
Applications	
Requiring clinical data	$1,542,000
Not requiring clinical data	$771,000
Supplements requiring clinical data	$771,000
Establishments	$497,200
Products	$86,520

VI. Fee Payment Options and Procedures

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received after September 30, 2010. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee identification (ID) number on your check, bank draft, or postal money order. Your payment can be mailed to: Food and Drug Administration, P.O. Box 70963, Charlotte, NC 28272–0963.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Wells Fargo, Attn: Food and Drug Administration Lockbox 70963, 1525 West WT Harris Blvd., rm. D1113–022, Charlotte, NC 28262. (Note: This Wells Fargo address is for courier delivery only.)

Please make sure that the FDA post office box number (P.O. Box 70963) is written on the check, bank draft, or postal money order.

Wire transfer payment may also be used. Please reference your unique user fee ID number when completing your transfer. The originating financial institution usually charges a wire transfer fee between $15.00 and $35.00. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, US Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD.

Application fees can also be paid online with an electronic check (ACH). FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after the user fee ID number is generated.

The tax identification number of the Food and Drug Administration is 53–0196965.

B. Establishment and Product Fees

FDA will issue invoices for establishment and product fees for FY 2011 under the new fee schedule in August 2010. Payment will be due on October 1, 2010. FDA will issue invoices in November 2011 for any products and establishments subject to fees for FY 2011 that qualify for fees after the August 2010 billing.

Dated: July 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19116 Filed 8–3–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–78]

Notice of Submission of Proposed Information Collection to OMB Research Plan for an Evaluation of the Section 202 Demonstration Planning Grant (DPG) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This research is intended to help HUD better understand sponsor perspectives on the effectiveness of the DPG program in assisting Section 202 properties reach initial closing within 18 months of fund reservation. The study will also provided information on sponsor perspectives of the marketing of the DPG program by HUD filed office staff, the DPG application process and the overall administration of the grant program. The respondents are both recipients and non-recipients on the 202 DPG grant.

DATES: *Comments Due Date: September 3, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

approval Number (2528–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Research Plan for an Evaluation of the Section 202 DPG Program.

OMB Approval Number: 2528–New.

Form Numbers: None.

Description of the Need For the Information and Its Proposed Use:This research is intended to help HUD better understand sponsor perspectives on the effectiveness of the DPG program in assisting Section 202 properties reach initial closing within 18 months of fund reservation. The study will also provide information on sponsor perspectives of the marketing of the DPG program by HUD filed office staff, the DPG application process and the overall administration of the grant program. The respondents are both recipients and non-recipients on the 202 DPG grant.

Frequency of Submission: On-occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	100	1		1.01		101

Total Estimated Burden Hours: 101.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 28, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–19081 Filed 8–3–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5430–N–01]

Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2011

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Proposed Fiscal Year (FY) 2011 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. Today's notice proposes FMRs for FY 2011 to be used to determine payment standard amounts for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for Housing Assistance Payment (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program. Other programs may require use of FMRs for other purposes.

The proposed FY 2011 FMR areas are based on current Office of Management and Budget (OMB) metropolitan area definitions and include HUD modifications that were first used in the determination of FY 2006 FMR areas. Changes to the OMB metropolitan area definitions through December 2009 are incorporated. The principal city for three metropolitan areas changed, which resulted in a code change. In Alaska, there was a name change for a nonmetropolitan borough and two boroughs in Alaska were divided to make four new boroughs.[1] Proposed FY 2011 FMRs are based on 2000 Census data updated using more current survey data. For FY 2011, FY 2010 FMRs are updated using 2008 American Community Survey (ACS) data, and more recent Consumer Price Index (CPI) rent and utility indexes. HUD continues to use ACS data in different ways based upon the number of two-bedroom standard-quality and recent-mover sample cases that are available in the FMR area or its Core-Based Statistical Area (CBSA).

This notice also proposes Small Area FMRs for the Dallas, TX HUD Metro FMR Area in accordance with a **Federal Register** Notice published May 18, 2010, (75 FR27808) announcing a Small Area FMR Demonstration project.

DATES: *Comment Due Date:* 30 days after publication.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs, as published in this notice, to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section.

Submission of Hard Copy Comments. To ensure that the information is fully considered by all of the reviewers, each commenter who is submitting hard copy comments, by mail or hand delivery, is requested to submit two copies of its comments to the address above, one addressed to the attention of the Rules Docket Clerk and the other addressed to the attention of Economic and Market

[1] The three metropolitan areas are: North Port-Bradenton-Sarasota, FL MSA, Crestview-Fort Walton Beach-Destin, FL MSA, and Steubenville-Weirton, OH–WV MSA. In Alaska, Prince of Wales-Ketchikan Census Area, AK is changed to Prince of Wales-Hyder Census Area, AK; the Alaskan borough of Skagway-Hoonah-Angoon is divided into Skagway and Hoonah-Angoon boroughs; and the Alaskan borough of Wrangell-Petersburg is divided into Wrangell and Petersburg boroughs.

Analysis Division staff in the appropriate HUD field office. Due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at (800) 245–2691 or access the information on the HUD Web site *http://www.huduser.org/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2011 FMR documentation system at *http://www.huduser.org/portal/datasets/fmr/fmrs/index.asp?data=fmr11* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.org/portal/datasets/50per.html* after publication of final FY 2011 FMRs.

In addition to FMRs calculated across an entire metropolitan area, HUD will operate Small Area FMR demonstration projects for the HCV program in selected metropolitan areas. A copy of the **Federal Register** notice announcing this program can be accessed at *http://www.huduser.org/portal/datasets/fmr/fmr2010f/Small_Area_FMRs.pdf.* A system for looking up Small Area Rents based on Proposed FY2011 FMRs is available at *http://www.huduser.org/portal/datasets/fmr/fmrs/index_sa.html.*

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the HCV program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. The interim rule published on October 2, 2000 (65 FR 58870), established 50th percentile FMRs for certain areas.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD User page at *http://www.huduser.org/datasets/fmr.html.* **Federal Register** notices also are available electronically from *http://www.gpoaccess.gov/fr/index.html,* the U.S. Government Printing Office Web site. Complete documentation of the methodology and data used to compute each area's proposed FY 2011 FMRs is available at *http://www.huduser.org/portal/datasets/fmr/fmrs/index.asp?data=fmr11.*

II. Procedures for the Development of FMRs

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c) states, in part, as follows:

> Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in this section.

HUD's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.)

In addition, HUD's regulations at 24 CFR 888.113 set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas are reviewed each year unless not qualified to be reviewed. Areas are not qualified to be reviewed if they have been made a 50th percentile area within the last three years or have lost 50th percentile status for failure to de-concentrate within the last three years.

For FY 2010 there are 17 areas using 50th percentile FMRs. None of these areas were evaluated for the FY 2011 FMRs because they have not completed 3 years of program participation since their last review, so all 17 areas will continue to use 50th percentile FMRs. Ten of these current 50th-percentile FMR areas will be up for review again in computation of the FY 2012 FMRs, and are listed below:

FY 2011 50TH-PERCENTILE FMR AREAS SLATED FOR ELIGIBILITY EVALUATION IN FY 2012

Albuquerque, NM MSA	Chicago-Joliet-Naperville, IL HMFA.[2]

FY 2011 50TH-PERCENTILE FMR AREAS SLATED FOR ELIGIBILITY EVALUATION IN FY 2012—Continued

Denver-Aurora, CO MSA	Hartford-West Hartford-East Hartford, CT HMFA.
Houston-Baytown-Sugar Land, TX HMFA	Kansas City, MO–KS, HMFA.
Milwaukee-Waukesha-West Allis, WI MSA	North Port-Bradenton-Sarasota, FL MSA.
Richmond, VA HMFA	Tacoma, WA HMFA.

The remaining 7 50th percentile FMR areas will complete three years in the program and be reviewed for the FY 2013 FMRs, as shown below:

FY 2011 50TH-PERCENTILE FMR AREAS SLATED FOR ELIGIBILITY EVALUATION IN FY 2013

Baltimore-Towson, MD MSA	Fort Lauderdale, FL HMFA.
Grand Rapids-Wyoming, MI HMFA	New Haven-Meriden, CT HMFA.
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA	Washington-Arlington-Alexandria, DC–VA–MD HMFA.
West Palm Beach-Boca Raton, FL HMFA	

In addition to these 17 50th percentile FMR areas, a new area, Bergen-Passaic, NJ HMFA, meets all of the criteria to be eligible to use 50th percentile FMRs, so for FY 2011 there are 18 50th percentile FMR areas. Under current regulations, Bergen-Passaic, NJ HMFA, will be in the 50th percentile program for three years and re-evaluated when the FY 2014 FMRs are being calculated.

III. FMR Methodology

This section provides a brief overview of how the FY 2011 FMRs are computed. For complete information on how FMR areas are determined, and on how each area's FMRs are derived, see the online documentation at: *http://www.huduser.org/portal/datasets/fmr/fmrs/index.asp?data=fmr11.*

The FY 2011 FMRs are based on current OMB metropolitan area definitions and standards that were first used in the FY 2006 FMRs. OMB changes to the metropolitan area definitions through December 2009 are incorporated. As of December 2009, there was a change in the principal city of three metropolitan areas that resulted in a code change. These three metropolitan areas are: North Port-Bradenton-Sarasota, FL MSA, Crestview-Fort Walton Beach-Destin, FL MSA, and Steubenville-Weirton, OH–WV MSA. In Alaska, there was a name change for a nonmetropolitan borough, from Prince of Wales-Ketchikan Census Area, AK to Prince of Wales-Hyder Census Area, AK; and two other Alaskan boroughs were divided, from Skagway-Hoonah-Angoon to Skagway and Hoonah-Angoon boroughs; and from Wrangell-Petersburg to Wrangell and Petersburg boroughs.

A. Data Sources—2000 Census, the American Community Survey, and the Consumer Price Index

As in all post-FY 2006 FMR publications, FY 2011 FMRs start with base rents generated using Census 2000 long form survey data. They are updated with American Community Survey (ACS) data and Bureau of Labor Statistics Consumer Price Index (CPI) data. FY 2011 FMRs are FY 2010 FMRs updated by replacing the CPI data used for FY 2010 FMRs with ACS 2008 survey data and updated CPI data. Specifically, the FY 2010 rent (as of date: April, 2010) is deflated to June, 2007 by dividing it by 18 months of CPI data representing June 2007 through December 2008 inflation, and the usual 15 month trend factor. This June 2007 rent is the best rent estimate available using only ACS survey data available last year and eliminating all other update data. It is this rent that will be updated with additional ACS data and new CPI data.

In order to preserve additional information gathered by HUD through random digit dialing (RDD) surveys, areas surveyed after June 2007 are updated separately, the details of which can be found at the Web site listed above.

B. Updates from 2007 to 2008—2008 ACS

ACS survey data continues to be applied to areas based on the type of area (CBSA, metropolitan subarea, or non-metropolitan county), the amount of survey data available, and the reliability of the survey estimates. Both one- and three-year ACS 2008 data are used to update June 2007 rents. All areas are updated with the change from 2007 to 2008 in state or metropolitan one-year standard quality median rents. HUD considered using the change in the three-year 2005–2007 ACS to three-year 2006–2008 ACS in place of the change from 2007 one-year ACS to 2008 one-year ACS, but the nature of the 3 year data mutes the effects of the more recent data, which HUD finds more important for achieving the objectives of the HCV program. So HUD used the change in ACS one year data from 2007 to 2008 for the update in all cases. Beginning with the FY 2010 FMRs, HUD tests these rent changes for statistical significance [3]

$$z = \frac{EST_1 - EST_2}{\sqrt{SE_1^2 + SE_2^2}}$$

before applying them to the appropriate base rent. Any state- or metropolitan-level change that is not statistically significant is not applied. That is, the updated 2008 rent is the same as the 2007 rent if the applicable update factor does not represent a statistically significant change. HUD applied this test as a measure to minimize fluctuations in rents due to survey error. HUD uses metropolitan-level rent changes for CBSA areas and subareas that have more than 200 standard quality sample cases in 2007 and 2008. All other areas are updated with state-level rent changes. For subareas, State and CBSA change factors continue to be selected based on which factor brings the subarea rent closer to the CBSA-wide rent. HUD updates subareas that have 200 or more local standard quality survey observations with their local area update factor.

[2] HMFA stands for HUD Metropolitan FMR Area.

[3] The change is considered statistically significant if $Z > 1.645$ where (see equation above) and EST_1 = ACS 2008 Estimate, EST_2 = ACS 2007 Estimate, SE_1=Standard Error of Estimate 1 and SE_2=Standard Error of Estimate 2.

After all areas have been updated with a standard quality median rent change, HUD evaluates further local areas with estimates that reflect more than 200 one-year recent mover cases. If the updated rent is outside the confidence interval of the ACS recent mover estimate, the updated rent is replaced with the ACS recent mover rent estimate. In areas without 200 or more one-year ACS recent mover observations, but with 200 or more three-year ACS recent mover observations, HUD uses the three year estimate [4] if it is statistically different from the updated 2008 rent based on the standard quality median rent change. This process estimates a June 2008 rent.

C. Updates from 2008 to 2009

ACS 2008 data updates the June 2007 rents used in the FY 2010 FMRs forward by 12 months to June 2008. HUD uses six months of 2008 and 12 months of 2009 CPI rent and utilities price index data to update the June 2008 rents to the end of 2009. HUD uses Local CPI data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors.

D. Updates from 2009 to 2011

The national 1990 to 2000 average annual rent increase trend of 3 percent is applied to end-of-2009 rents for 15 months, to derive the proposed FY 2011 FMRs.

The area-specific data and computations used to calculate proposed FY 2011 FMRs and FMR area definitions can be found at *http://www.huduser.org/portal/datasets/fmr/fmrs/index.asp?data=fmr11.*

E. Bedroom Rent Adjustments

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common size of rental units and, therefore, the most reliable to survey and analyze. After each Decennial Census, HUD calculates rent relationships between two-bedroom units and other unit sizes and uses them to set FMRs for other units. HUD does this because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other bedroom sizes than it is to develop independent FMR estimates for each bedroom size. HUD did the last update of bedroom-rent relationships using 2000 Census data. A publicly releasable version of the data file used for the derivations of rent ratios is available at *http://www.huduser.org/portal/datasets/fmr/CensusRentData/index.html.*

HUD made adjustments using 2000 Census data to establish rent ratios for areas with local bedroom-size intervals above or below what are considered reasonable ranges, or where sample sizes are inadequate to accurately measure bedroom rent differentials. Experience has shown that highly unusual bedroom ratios typically reflect inadequate sample sizes or peculiar local circumstances that HUD would not want to utilize in setting FMRs (*e.g.,* luxury efficiency apartments that rent for more than typical one-bedroom units). HUD established bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. These ranges are: efficiency FMRs are constrained to fall between 0.65 and 0.83 of the two-bedroom FMR; one-bedroom FMRs must be between 0.76 and 0.90 of the two-bedroom FMR; three-bedroom FMRs must be between 1.10 and 1.34 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.14 and 1.63 of the two-bedroom FMR. HUD adjusts bedroom rents for a given FMR area if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (i.e., efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents).

HUD further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units than would result from using unadjusted market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds bonuses of 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

For low-population, nonmetropolitan counties with small 2000 Census samples of recent-mover rents, HUD uses Census-defined county group data to determine rents for each bedroom size. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes. The areas covered by this estimation method had less than the HUD standard of 200 two-bedroom, Census-tabulated observations.

IV. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the HCV program is 40 percent of the FMR for a two-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th-percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2010 were updated to FY 2011 using the same data used to estimate the Housing Choice Voucher program FMRs if the respective FMR area's definition remained the same. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs. Areas with definitional changes that previously had exception manufactured housing space rental FMRs are requested to submit new surveys to justify higher-than-standard space rental FMRs if they believe higher-space rental allowances are needed.

V. Methodology for Small-Area FMRs

Use of metropolitan area-wide FMRs allows HUD's Section 8 Voucher Tenants access to different parts of a metropolitan area; however, because FMRs generally are set at the 40th percentile of the metropolitan rent distribution, certain neighborhoods may not have many units available in the FMR range. That is why HUD has an exception rent policy that allows payments standards to be set much higher (or much lower) than the FMR, but this policy is dependent on a showing of program need in terms of whether or not suitable housing is available. To make all of an FMR area accessible to our clients, HUD is researching ways to set FMRs at a more

[4] The recent mover estimate from the three year data includes all those who moved in the most recent 24 month period. That means that no 2006 survey data are included in this "three-year" recent mover classification and the likelihood of having a valid (with 200 or more sample cases) three-year recent mover rent is lower for these estimates.

granular level. Currently, HUD is proposing that small areas be defined by U.S. Postal Service ZIP codes, as the basis for publishing FMRs in metropolitan areas. For non-metropolitan areas, HUD would continue to use counties as the basis for publishing FMRs.

The most recent data regarding rents, incomes and other socio-economic information collected by the U.S. Census Bureau comes from the ACS. At this time, only one-year and three-year ACS tables are available. ACS five-year data are expected to have sufficient data at the Small Area level available to permit the calculation of statistically reliable FMRs for many ZIP codes in metropolitan areas. However, the first publication of five-year ACS data does not begin until the fourth quarter of 2010, so for the Small Area FMR Demonstration Projects, HUD must use a different data source; HUD will use data from the 2000 Decennial Census to estimate the rental rate relationship between the OMB-defined CBSA and each ZIP code within the given metropolitan area.[5]

Before a rental relationship can be determined, HUD first eliminates any records where there were zero occupied units for occupants paying cash rent. HUD then aggregates these rental distribution data for each CBSA and calculates a median (50th percentile) gross rent across all bedroom sizes. These CBSA median gross rents serve as the denominator in the rental rate relationship calculation. HUD then aggregates the rental distributions for each ZIP code within a given CBSA (ZIP codes can cross county boundaries; therefore, there may be multiple records for each ZIP code within a single CBSA, and HUD aggregates these multiple records). HUD calculates a median gross rent for each ZIP code (or ZIP code part for ZIP codes spanning CBSA boundaries). HUD restricts the use of ZIP code level median gross rents to those areas that have at least 1,000 cash rental unit observations.[6]

HUD calculates the rental rate relationship in the following manner for those ZIP codes within the metropolitan area that have 1,000 or more cash rental units:

Rental Rate Ratio = Median Gross Rent for ZIP Code area/Median Gross Rent for CBSA

The rental rate relationship is capped at 150 percent for areas that would otherwise be greater. If the ZIP code within the CBSA does not have 1,000 cash rental units, then the rental rate relationship is calculated as:

Rental Rate Ratio = Median Gross Rent STCO/Median Gross Rent of the CBSA

where STCO is the County within the State containing the ZIP Code.[7] For metropolitan areas, FMRs will be calculated and published for each small area. HUD chose ZIP Codes because they localize rents, and a unit's ZIP Code is easily identified both by PHAs and by tenants.

The individual ZIP-code-level two-bedroom FMR for each part of the FMR area is the product of the rental rate ratio and the two-bedroom FMR for that area's CBSA as calculated using methods employed for past metropolitan area FMR estimates and as specified in this Notice. HUD then compares this product to the state non-metropolitan minimum two-bedroom rent for the state the area is located in and if the ZIP code rent determined using the rental rate ratio is less than the minimum, the ZIP code rent is set at the non-metropolitan minimum for that state. HUD estimates the relationship between two bedroom units and other bedroom sizes from decennial census data and then holds it constant until superseded by more recent data. HUD will calculate Small Area FMRs for other bedroom sizes based on the bedroom size relationships estimated for the large area of geography. HUD anticipates updating the bedroom rental rate ratios with the release of five-year ACS data (covering 2005 through 2009), and then once every five years when the five-year ACS sample is completely replaced.[8] The final calculated rents are then rounded to the nearest $10.[9]

Small Area FMRs for all metropolitan areas are available for viewing and download on the Internet at: *http://www.huduser.org/portal/datasets/fmr.html.* These have been updated using proposed FY 2011 FMRs as the basis and posted on the Web site. HUD is publishing proposed Small Area FMRs for the Dallas, TX HUD Metro FMR Area in this notice as HUD has determined that the Dallas area will be a participant in the Small Area FMR Demonstration project.

VI. Additional Participation in the Small Area FMR Demonstration Project

Additional eligible PHAs may request participation in the Small Area Demonstration Project. To be eligible, the PHA or a group of PHAs must represent at least 80 percent of the Section 8 voucher tenants in a metropolitan area. Any PHA that is part of the Demonstration Project must use payment schedules based on these Small Area FMRs, beginning October 1, 2010 or when they are designated as a Small Area Demonstration Project in a subsequent **Federal Register** Notice. HUD assumes that the need for rent reasonableness studies will be reduced by using Small Area FMRs and is requesting information on rent reasonableness study results for Small Area FMR Demonstration Project areas. HUD is requesting that participating PHAs provide HUD with information on how long it takes tenants to find housing, and if this is less than the time spent when metropolitan FMRs were used; the distribution of tenants in areas above and below the metropolitan FMR; and the payment standards used for the Small Area FMRs. HUD would also request information on landlord actions in areas where the Small Area FMR is significantly lower or higher than the metropolitan FMR, and on tenants' interest in using vouchers in the new higher rent areas. HUD also would like to hear if the PHAs are experiencing any administrative issues.

VII. Request for Public Comments

HUD seeks public comments on FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing

[5] Note that some ZIP Codes span metropolitan area boundaries so that a ZIP Code may contain parts of a metropolitan area and one (or more) nonmetropolitan county (counties), or part of another metropolitan CBSA. As in current FMR policy, nonmetropolitan counties would not be broken along ZIP code or any other lines under the Small-Area FMR policy. ZIP Codes that span more than one metropolitan CBSA would have different FMRs in each CBSA as they do under current metropolitan FMR policy.

[6] HUD anticipates that 1000 cash renter occupied units in the 2000 Census will approximate statistically valid samples of rental units in the 5-year ACS tabulations.

[7] For ZIP codes that cross county boundaries, the Median Gross Rent in the numerator is calculated as the rental unit weighted average of the Median Gross rents for each county containing the ZIP code.

[8] The current decennial data is not robust enough to lead us to believe that updating bedroom ratios on a more frequent basis would provide many changes. The current bedroom ratios are constrained by ranges that reflect the average relationship to the 2-bedroom rent and for the 3-bedroom and 4-bedroom rents bonuses have been added to assist with the operation of the Section 8 program.

[9] Calculation parameters such as the 150% cap and the rounding of Small Area FMRs to the nearest $10 were topics for public comment as requested in HUD's May 18, 2010 **Federal Register** Notice (75 FR 27808). The comment period for that notice ended on July 19, 2010. The parameters listed in this notice may be changed subject to the comments filed in relation to the May 18, 2010 notice or based on the comments filed in response to this notice. As an example, the May 18, 2010 notice discussed rounding Small Area FMRs to the nearest $25; however, in response to comments, and further analysis by HUD, rounding to the nearest $10 is proposed in this notice.

survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the unit-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

For the supporting data, HUD recommends the use of professionally conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of approximately $35,000–$50,000. Areas with 2,000 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual rents for two-bedroom units are significantly different from the FMRs proposed by HUD.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties where FMRs are based on the combined rents in the cluster of FMR areas will not have their FMRs revised unless the grouped survey results show a revised FMR statistically different from the combined rent level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled "Random Digit Dialing Surveys: A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain the guide entitled "Rental Housing Surveys: A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments." These guides are available from HUD USER on 800–245–2691, or from HUD's Web site, in Microsoft Word or Adobe Acrobat format, at the following address: *http://www.huduser.org/datasets/fmr.html.*

Other survey methodologies are acceptable in providing data to support comments, if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The Decennial Census should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

Most surveys cover only one- and two-bedroom units, which has statistical advantages. If the survey is statistically acceptable, HUD will estimate FMRs for other bedroom sizes using ratios based on the Decennial Census. A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

While HUD is soliciting comments concerning the implementation of small area FMRs and the small area FMR Demonstration Project under **Federal Register** notice (75 FR 27808), comments may be filed under this notice on the small area FMRs for specific areas. HUD will publish a separate notice requesting volunteers for participation in a small area FMR Demonstration project. The forthcoming notice will include criteria for determining how volunteers will be selected. HUD is particularly interested in comments concerning the proposed small area FMRs in the Dallas, TX HMFA and any other area where commenters can show that the small area FMRs based on Proposed FY 2011 FMRs are substantially out of line with local area housing conditions.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as shown in the Appendix to this notice:

Dated: July 29, 2010.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Areas—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan CBSAs, which are made up of one or more counties, as defined by the Office of Management and Budget (OMB), with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas. FMRs in small area demonstration projects are specific to ZIP codes within a given Metropolitan area.

b. Modifications to OMB Definitions—Following OMB guidance, the estimation procedure for the FY 2011 proposed FMRs incorporates the current OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below.

Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as nonmetropolitan counties.) Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base Rent differs by at least 5 percent from (*i.e.,* is at most 95 percent or at least 105 percent of) the MSA 2000 Census Base Rent, or when the 2000 Census Median Family Income for the subarea differs by at least 5 percent from the MSA 2000 Census Median Family Income. MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HMFAs to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in Schedule B.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.

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SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston-Oxford, AL MSA	426	471	585	773	909	Calhoun
Auburn-Opelika, AL MSA	421	502	647	851	874	Lee
Birmingham-Hoover, AL HMFA	634	705	786	997	1027	Bibb, Blount, Jefferson, St. Clair, Shelby
Chilton County, AL HMFA	398	550	612	769	881	Chilton
Columbus, GA-AL MSA	544	573	656	872	1033	Russell
Decatur, AL MSA	466	523	602	787	817	Lawrence, Morgan
Dothan, AL HMFA	414	487	552	705	806	Geneva, Houston
Florence-Muscle Shoals, AL MSA	490	493	598	762	945	Colbert, Lauderdale
Gadsden, AL MSA	386	488	593	760	785	Etowah
Henry County, AL HMFA	350	482	536	641	660	Henry
Huntsville, AL MSA	517	563	665	910	999	Limestone, Madison
Mobile, AL MSA	579	619	699	916	1081	Mobile
Montgomery, AL MSA	552	653	735	975	1287	Autauga, Elmore, Lowndes, Montgomery
Tuscaloosa, AL MSA	482	557	722	928	957	Greene, Hale, Tuscaloosa
Walker County, AL HMFA	496	497	596	744	813	Walker

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baldwin	534	643	764	1013	1160	Barbour	448	449	539	667	687
Bullock	397	449	550	659	710	Butler	397	449	550	659	710
Chambers	445	483	536	727	750	Cherokee	464	465	560	667	688
Choctaw	444	469	536	680	908	Clarke	348	481	536	642	942
Clay	446	448	536	662	825	Cleburne	450	451	541	663	825
Coffee	426	487	551	754	967	Conecuh	444	469	536	680	908
Coosa	435	481	536	726	815	Covington	446	447	536	731	754
Crenshaw	397	449	550	659	710	Cullman	464	478	560	753	774
Dale	414	478	536	774	939	Dallas	355	493	547	690	740
DeKalb	400	425	536	713	733	Escambia	445	451	536	668	822
Fayette	352	407	536	781	943	Franklin	349	452	536	723	941
Jackson	445	482	536	683	941	Lamar	359	445	536	716	940
Macon	397	428	551	735	759	Marengo	445	473	536	694	713
Marion	348	407	536	681	942	Marshall	472	506	571	771	849
Monroe	445	483	536	742	820	Perry	445	473	536	694	713
Pickens	359	445	536	716	940	Pike	427	460	536	688	710
Randolph	446	448	536	662	825	Sumter	359	458	536	716	940
Talladega	454	455	545	735	961	Tallapoosa	429	439	538	759	881
Washington	444	469	536	680	908	Wilcox	444	469	536	680	908
Winston	358	407	536	642	660						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK HMFA	726	826	1036	1492	1817	Anchorage
Fairbanks, AK MSA	635	764	977	1415	1494	Fairbanks North Star
Matanuska-Susitna Borough, AK HMFA	663	772	985	1401	1701	Matanuska-Susitna

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	793	902	1143	1413	1456	Aleutians West	793	902	1143	1413	1456
Bethel	909	1138	1381	1652	2425	Bristol Bay	793	902	1143	1413	1456
Denali	668	824	1029	1445	1627	Dillingham	793	902	1143	1413	1456
Haines	668	824	1029	1445	1627	Hoonah-Angoon	793	902	1143	1413	1456
Juneau	809	991	1247	1685	2100	Kenai Peninsula	598	684	832	1140	1461
Ketchikan Gateway	713	910	1094	1594	1921	Kodiak Island	765	895	1178	1693	1792
Lake and Peninsula	793	902	1143	1413	1456	Nome	795	1022	1173	1416	1458
North Slope	818	957	1257	1503	1547	Northwest Arctic	793	902	1143	1413	1456
Petersburg	793	902	1143	1413	1456	Prince of Wales-Hyder	793	902	1143	1413	1456
Sitka	759	875	1044	1521	1832	Skagway	793	902	1143	1413	1456
Southeast Fairbanks	668	824	1029	1445	1627	Valdez-Cordova	668	824	1029	1445	1627
Wade Hampton	793	902	1143	1413	1456	Wrangell	793	902	1143	1413	1456
Yakutat	793	902	1143	1413	1456	Yukon-Koyukuk	793	902	1143	1413	1456

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ MSA	845	1005	1136	1461	1843	Coconino
Lake Havasu City-Kingman, AZ MSA	633	697	812	1123	1253	Mohave
Phoenix-Mesa-Glendale, AZ MSA	666	776	936	1363	1596	Maricopa, Pinal
Prescott, AZ MSA	705	728	919	1339	1379	Yavapai
Tucson, AZ MSA	562	661	848	1221	1291	Pima
Yuma, AZ MSA	592	699	835	1184	1451	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	447	547	647	897	1137	Cochise	524	607	762	1052	1293
Gila	571	669	880	1208	1244	Graham	594	640	717	991	1140
Greenlee	543	603	757	1040	1177	La Paz	609	610	732	1036	1067
Navajo	532	569	751	1012	1199	Santa Cruz	626	626	794	1158	1192

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR HMFA	482	508	635	925	951	Benton, Madison, Washington
Fort Smith, AR-OK HMFA	402	457	569	758	826	Crawford, Sebastian
Franklin County, AR HMFA	342	448	526	666	814	Franklin
Grant County, AR HMFA	443	456	557	807	831	Grant
Hot Springs, AR MSA	411	510	634	791	816	Garland
Jonesboro, AR HMFA	479	499	576	810	835	Craighead
Little Rock-North Little Rock-Conway, AR HMFA	572	650	725	971	1002	Faulkner, Lonoke, Perry, Pulaski, Saline
Memphis, TN-MS-AR HMFA	628	682	758	1010	1041	Crittenden
Pine Bluff, AR MSA	406	482	604	725	859	Cleveland, Jefferson, Lincoln
Poinsett County, AR HMFA	342	442	526	700	838	Poinsett
Texarkana, TX-Texarkana, AR MSA	507	512	630	769	836	Miller

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	401	423	526	764	785
Baxter	403	468	566	761	959
Bradley	391	398	526	652	691
Carroll	460	461	554	699	973
Clark	418	424	546	704	725
Cleburne	476	477	572	784	1007
Conway	437	450	526	724	788
Dallas	340	472	526	670	853
Drew	376	483	580	729	1017
Greene	341	475	526	770	792
Hot Spring	438	439	526	690	711
Independence	366	436	526	680	739
Jackson	354	464	526	742	765
Lafayette	415	474	545	652	779
Lee	373	422	526	701	815
Logan	342	442	526	752	842
Mississippi	371	413	541	714	861
Montgomery	407	473	596	749	772
Newton	438	439	528	682	766
Phillips	436	440	526	685	706
Polk	437	474	526	684	832
Prairie	438	439	526	659	680
St. Francis	445	462	539	761	944
Searcy	438	439	528	682	766
Sharp	438	439	526	670	692
Union	450	473	541	701	910
White	451	452	543	737	759
Yell	434	458	526	721	744

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	408	422	555	665	731
Boone	444	445	535	685	769
Calhoun	340	472	526	670	853
Chicot	391	398	526	652	691
Clay	423	426	526	674	717
Columbia	345	443	530	650	745
Cross	439	441	529	771	842
Desha	391	398	526	669	691
Fulton	419	420	526	691	771
Hempstead	411	461	539	646	742
Howard	402	467	526	677	700
Izard	419	420	526	691	771
Johnson	341	468	526	701	838
Lawrence	343	420	526	647	855
Little River	415	474	545	665	779
Marion	437	438	526	692	762
Monroe	438	439	526	659	680
Nevada	415	474	545	652	779
Ouachita	340	473	526	724	848
Pike	415	474	545	652	779
Pope	395	424	549	774	796
Randolph	342	428	526	629	923
Scott	437	439	526	727	922
Sevier	439	453	526	727	842
Stone	419	420	526	691	771
Van Buren	342	399	526	652	841
Woodruff	438	439	526	659	680

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield-Delano, CA MSA	605	653	778	1124	1347	Kern
Chico, CA MSA	609	725	874	1232	1471	Butte
El Centro, CA MSA	622	703	867	1193	1520	Imperial
Fresno, CA MSA	657	724	855	1244	1340	Fresno
Hanford-Corcoran, CA MSA	655	697	810	1181	1423	Kings
Los Angeles-Long Beach, CA HMFA	973	1173	1465	1967	2367	Los Angeles
Madera-Chowchilla, CA MSA	659	691	882	1282	1322	Madera
Merced, CA MSA	591	674	819	1168	1364	Merced
Modesto, CA MSA	696	768	905	1298	1499	Stanislaus
Napa, CA MSA	969	1086	1410	1950	2215	Napa
Oakland-Fremont, CA HMFA	986	1191	1411	1913	2369	Alameda, Contra Costa
Orange County, CA HMFA	1175	1327	1584	2241	2580	Orange

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oxnard-Thousand Oaks-Ventura, CA MSA	1015	1120	1425	2042	2336	Ventura
Redding, CA MSA	599	698	849	1239	1493	Shasta
Riverside-San Bernardino-Ontario, CA MSA	866	952	1123	1580	1843	Riverside, San Bernardino
Sacramento--Arden-Arcade--Roseville, CA HMFA	755	859	1047	1511	1732	El Dorado, Placer, Sacramento
Salinas, CA MSA	845	951	1092	1543	1616	Monterey
San Benito County, CA HMFA	847	1147	1276	1808	2238	San Benito
San Diego-Carlsbad-San Marcos, CA MSA	1020	1167	1428	2031	2509	San Diego
San Francisco, CA HMFA	1191	1465	1833	2447	2586	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA HMFA	1222	1416	1702	2447	2694	Santa Clara
San Luis Obispo-Paso Robles, CA MSA	826	977	1190	1734	1784	San Luis Obispo
Santa Barbara-Santa Maria-Goleta, CA MSA	1072	1197	1343	1769	2019	Santa Barbara
Santa Cruz-Watsonville, CA MSA	1125	1327	1730	2489	2566	Santa Cruz
Santa Rosa-Petaluma, CA MSA	903	1099	1387	1968	2301	Sonoma
Stockton, CA MSA	656	748	922	1266	1594	San Joaquin
Vallejo-Fairfield, CA MSA	1023	1101	1263	1771	2181	Solano
Visalia-Porterville, CA MSA	503	562	654	935	961	Tulare
Yolo, CA HMFA	819	867	1060	1544	1643	Yolo
Yuba City, CA MSA	564	636	782	1138	1218	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	658	738	941	1342	1381	Amador	710	833	1093	1588	1636
Calaveras	725	726	873	1273	1404	Colusa	660	663	862	1113	1513
Del Norte	648	656	849	1236	1274	Glenn	566	581	764	994	1021
Humboldt	602	705	927	1329	1472	Inyo	596	624	812	1183	1395
Lake	595	697	908	1316	1465	Lassen	577	677	889	1293	1332
Mariposa	658	738	941	1342	1381	Mendocino	663	818	994	1357	1743
Modoc	572	632	827	1178	1223	Mono	775	934	1193	1634	2096
Nevada	745	870	1146	1655	2014	Plumas	590	691	910	1328	1598
Sierra	696	812	1071	1518	1879	Siskiyou	514	617	789	1123	1157
Tehama	538	611	798	1159	1393	Trinity	583	612	803	1102	1222
Tuolumne	640	761	983	1359	1400						

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder, CO MSA	762	882	1107	1614	1935	Boulder
Colorado Springs, CO HMFA	546	612	773	1103	1305	El Paso
*Denver-Aurora-Broomfield, CO MSA	698	796	1007	1430	1667	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Fort Collins-Loveland, CO MSA	586	703	852	1241	1446	Larimer
Grand Junction, CO MSA	597	598	718	1045	1264	Mesa
Greeley, CO MSA	552	585	716	1045	1232	Weld
Pueblo, CO MSA	502	528	694	909	1029	Pueblo
Teller County, CO HMFA	560	654	861	1254	1510	Teller

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	431	533	592	805	1040
Baca	453	532	592	843	910
Chaffee	446	562	685	998	1028
Conejos	453	532	592	843	910
Crowley	471	487	592	776	954
Delta	524	536	631	866	892
Eagle	889	1037	1365	1717	2345
Garfield	910	1036	1149	1418	1460
Gunnison	551	605	787	1089	1382
Huerfano	453	532	592	843	910
Kiowa	471	487	592	776	954
Lake	672	847	1023	1274	1795
Las Animas	404	536	594	766	791
Logan	464	465	592	771	892
Moffat	546	597	749	982	1315
Montrose	451	592	686	910	1128
Otero	462	488	592	820	844
Phillips	471	487	592	776	954
Prowers	454	533	592	803	1041
Rio Grande	454	532	592	859	912
Saguache	453	532	592	843	910
San Miguel	723	868	1109	1617	1666
Summit	777	913	1193	1699	2094
Yuma	471	487	592	776	954

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	536	630	793	964	1245
Bent	471	487	592	776	954
Cheyenne	471	487	592	776	954
Costilla	453	532	592	843	910
Custer	477	558	735	1029	1184
Dolores	536	628	727	963	1242
Fremont	424	507	651	934	1071
Grand	533	608	773	1125	1159
Hinsdale	672	847	1023	1274	1795
Jackson	597	690	766	987	1192
Kit Carson	471	487	592	776	954
La Plata	588	718	821	1152	1311
Lincoln	471	487	592	776	954
Mineral	672	847	1023	1274	1795
Montezuma	469	549	634	757	1011
Morgan	509	552	615	819	990
Ouray	672	847	1023	1274	1795
Pitkin	938	1097	1443	2004	2534
Rio Blanco	597	690	766	987	1192
Routt	692	819	1065	1274	1870
San Juan	536	628	727	963	1242
Sedgwick	471	487	592	776	954
Washington	471	487	592	776	954

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT HMFA	838	1083	1291	1543	1873	Fairfield County towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
Colchester-Lebanon, CT HMFA	733	860	1129	1350	1393	New London County towns of Colchester town, Lebanon town
Danbury, CT HMFA	1039	1262	1601	1916	2376	Fairfield County towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
*Hartford-West Hartford-East Hartford, CT HMFA	760	910	1113	1337	1659	Hartford County towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Hartland town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Middlesex County towns of Chester town, Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town Tolland County towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Union town, Vernon town, Willington town
Milford-Ansonia-Seymour, CT HMFA	913	1058	1184	1507	1655	New Haven County towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
*New Haven-Meriden, CT HMFA	841	954	1152	1379	1576	New Haven County towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
Norwich-New London, CT HMFA	733	870	1007	1233	1361	New London County towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Lyme town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Voluntown town, Waterford town
Southern Middlesex County, CT HMFA	862	908	1155	1482	1690	Middlesex County towns of Clinton town, Deep River town, Essex town, Killingworth town, Old Saybrook town, Westbrook town
Stamford-Norwalk, CT HMFA	1190	1449	1811	2360	2851	Fairfield County towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT HMFA	618	800	951	1138	1185	New Haven County towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Litchfield County, CT	662	862	1018	1307	1470	Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town, Colebrook town, Cornwall town, Goshen town, Harwinton town, Kent town, Litchfield town, Morris town, New Hartford town, New Milford town, Norfolk town, North Canaan town, Plymouth town, Roxbury town, Salisbury town, Sharon town, Thomaston town, Torrington town, Warren town, Washington town, Watertown town, Winchester town, Woodbury town
Windham County, CT	611	740	891	1121	1189	Ashford town, Brooklyn town, Canterbury town, Chaplin town, Eastford town, Hampton town, Killingly town, Plainfield town, Pomfret town, Putnam town, Scotland town, Sterling town, Thompson town, Windham town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	674	733	812	1062	1426	Kent

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

DELAWARE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA..	789	900	1077	1317	1589	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	620	675	750	1026	1056						

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Washington-Arlington-Alexandria, DC-VA-MD HMFA...	1131	1289	1461	1885	2466	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baker County, FL HMFA	385	533	592	866	889	Baker
Cape Coral-Fort Myers, FL MSA	810	874	996	1354	1393	Lee
Crestview-Fort Walton Beach-Destin, FL MSA	648	759	854	1246	1368	Okaloosa
Deltona-Daytona Beach-Ormond Beach, FL MSA	645	754	938	1213	1248	Volusia
*Fort Lauderdale, FL HMFA	956	1069	1285	1777	2256	Broward
Gainesville, FL MSA	656	723	824	1205	1242	Alachua, Gilchrist
Jacksonville, FL HMFA	685	779	907	1138	1304	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	663	732	843	1069	1254	Polk
Miami-Miami Beach-Kendall, FL HMFA	862	976	1184	1514	1770	Miami-Dade
Naples-Marco Island, FL MSA	909	1042	1173	1458	1518	Collier
*North Port-Bradenton-Sarasota, FL MSA	843	923	1111	1419	1559	Manatee, Sarasota
Ocala, FL MSA	648	667	783	1028	1059	Marion
Orlando-Kissimmee-Sanford, FL MSA	795	865	988	1237	1456	Lake, Orange, Osceola, Seminole
Palm Bay-Melbourne-Titusville, FL MSA	629	770	907	1222	1362	Brevard
Palm Coast, FL MSA	692	798	1004	1406	1499	Flagler
Panama City-Lynn Haven-Panama City Beach, FL MSA..	668	705	807	1114	1240	Bay
Pensacola-Ferry Pass-Brent, FL MSA	654	712	790	1145	1385	Escambia, Santa Rosa
Port St. Lucie, FL MSA	754	756	958	1266	1305	Martin, St. Lucie
Punta Gorda, FL MSA	676	708	918	1340	1613	Charlotte
Sebastian-Vero Beach, FL MSA	621	750	956	1190	1225	Indian River
Tallahassee, FL HMFA	680	756	933	1245	1281	Gadsden, Jefferson, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	714	792	958	1214	1466	Hernando, Hillsborough, Pasco, Pinellas
Wakulla County, FL HMFA	639	694	772	1015	1047	Wakulla
*West Palm Beach-Boca Raton, FL HMFA	917	1075	1269	1794	1849	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	418	580	643	797	822	Calhoun	539	540	647	815	930
Citrus	577	627	694	1007	1212	Columbia	503	581	687	857	1205
DeSoto	567	580	682	822	846	Dixie	488	533	592	739	824
Franklin	538	540	647	815	927	Glades	596	635	722	882	941
Gulf	539	540	647	815	930	Hamilton	488	533	592	739	824
Hardee	567	615	682	837	860	Hendry	542	648	722	868	1071

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 8

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Highlands	612	615	736	952	1138	Holmes	514	546	620	807	847
Jackson	414	532	592	733	855	Lafayette	488	533	592	739	824
Levy	501	537	604	771	794	Liberty	539	540	647	815	930
Madison	539	540	647	815	930	Monroe	900	1096	1350	1964	2103
Okeechobee	609	631	734	989	1018	Putnam	510	553	614	737	759
Sumter	490	533	592	777	1040	Suwannee	392	534	592	746	818
Taylor	548	594	661	791	812	Union	501	576	647	856	883
Walton	603	621	727	899	925	Washington	394	448	592	848	873

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	509	544	638	856	884	Baker, Dougherty, Lee, Terrell, Worth
Athens-Clarke County, GA MSA	545	606	760	1012	1044	Clarke, Madison, Oconee, Oglethorpe
Atlanta-Sandy Springs-Marietta, GA HMFA	731	792	881	1072	1170	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Augusta-Richmond County, GA-SC MSA	516	560	629	842	886	Burke, Columbia, McDuffie, Richmond
Brunswick, GA MSA	511	555	616	878	1082	Brantley, Glynn, McIntosh
Butts County, GA HMFA	406	543	627	915	1089	Butts
Chattanooga, TN-GA MSA	584	617	727	895	1052	Catoosa, Dade, Walker
Columbus, GA-AL MSA	544	573	656	872	1033	Chattahoochee, Harris, Marion, Muscogee
Dalton, GA HMFA	521	566	626	774	798	Whitfield
Gainesville, GA MSA	711	746	860	1056	1225	Hall
Haralson County, GA HMFA	451	473	542	789	956	Haralson
Hinesville-Fort Stewart, GA HMFA	515	559	623	877	997	Liberty
Lamar County, GA HMFA	475	477	572	754	1004	Lamar
Long County, GA HMFA	460	499	555	760	784	Long
Macon, GA MSA	536	581	646	797	830	Bibb, Crawford, Jones, Twiggs
Meriwether County, GA HMFA	465	471	561	677	697	Meriwether
Monroe County, GA HMFA	516	561	622	745	770	Monroe
Murray County, GA HMFA	488	527	587	702	723	Murray
Rome, GA MSA	492	501	647	794	820	Floyd
Savannah, GA MSA	668	723	805	1068	1103	Bryan, Chatham, Effingham
Valdosta, GA MSA	526	527	634	860	886	Brooks, Echols, Lanier, Lowndes
Warner Robins, GA MSA	582	593	704	1022	1175	Houston

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	449	488	542	661	681	Atkinson	450	470	542	691	786
Bacon	450	470	542	691	786	Baldwin	423	509	632	755	778
Banks	469	508	563	684	972	Ben Hill	356	458	547	662	680
Berrien	444	446	542	672	692	Bleckley	380	444	542	671	769
Bulloch	499	517	612	734	754	Calhoun	450	488	542	695	854
Camden	556	558	672	978	1179	Candler	449	488	542	661	681
Charlton	450	470	542	691	786	Chattooga	353	432	542	650	946

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	450	488	542	695	854
Coffee	449	464	542	675	825
Cook	450	460	542	737	953
Decatur	402	467	615	736	817
Dooly	450	466	542	683	922
Elbert	450	470	542	681	702
Evans	449	488	542	661	681
Franklin	469	508	563	684	972
Glascock	389	411	542	649	762
Grady	352	487	542	751	777
Habersham	534	537	643	770	1128
Hart	450	488	542	647	950
Jackson	558	606	674	819	1069
Jefferson	389	433	542	649	762
Johnson	408	500	557	720	751
Lincoln	450	470	542	681	702
Macon	450	466	542	683	922
Mitchell	353	448	542	650	902
Morgan	487	488	602	721	742
Pierce	450	470	542	691	786
Pulaski	411	480	542	789	828
Quitman	450	488	542	695	854
Randolph	450	488	542	695	854
Screven	389	411	542	649	762
Stephens	361	502	557	667	688
Sumter	424	476	585	700	1028
Taliaferro	450	470	542	681	702
Taylor	450	466	542	683	922
Thomas	497	539	599	769	1051
Toombs	352	488	542	755	836
Treutlen	411	480	542	725	829
Turner	450	477	542	687	838
Upson	382	517	588	703	724
Warren	450	470	542	681	702
Wayne	388	439	542	715	951
Wheeler	411	480	542	725	829
Wilcox	411	480	542	725	829
Wilkinson	408	500	557	720	751

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clinch	450	470	542	691	786
Colquitt	451	487	542	649	816
Crisp	450	454	542	685	706
Dodge	428	429	542	725	746
Early	450	488	542	695	854
Emanuel	354	411	542	661	844
Fannin	367	510	565	676	811
Gilmer	531	575	641	845	1021
Gordon	531	535	687	822	848
Greene	450	470	542	681	702
Hancock	450	470	542	681	702
Irwin	450	477	542	687	838
Jeff Davis	449	488	542	661	681
Jenkins	389	411	542	649	762
Laurens	450	489	542	728	883
Lumpkin	475	617	733	990	1097
Miller	418	486	542	679	809
Montgomery	411	480	542	725	829
Peach	490	492	593	849	892
Polk	444	494	603	743	768
Putnam	409	413	542	788	810
Rabun	533	553	642	828	998
Schley	450	466	542	683	922
Seminole	418	486	542	679	809
Stewart	450	488	542	695	854
Talbot	519	520	627	772	795
Tattnall	451	487	542	715	782
Telfair	411	480	542	725	829
Tift	472	512	567	724	837
Towns	533	553	642	824	998
Troup	519	525	658	832	859
Union	533	553	642	824	998
Ware	449	485	542	694	728
Washington	389	446	542	662	762
Webster	450	466	542	683	922
White	474	591	657	829	998
Wilkes	450	470	542	681	702

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	1190	1396	1702	2470	2764	Honolulu

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

HAWAII continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	850	1020	1145	1614	1769
Kauai	980	1104	1454	1825	1986
Kalawao	1021	1177	1383	1748	1990
Maui	1255	1391	1617	2164	2317

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City-Nampa, ID HMFA	506	600	708	1029	1095	Ada, Boise, Canyon, Owyhee
Coeur d'Alene, ID MSA	570	615	740	1076	1203	Kootenai
Gem County, ID HMFA	522	632	702	1021	1050	Gem
Idaho Falls, ID MSA	484	510	651	893	1120	Bonneville, Jefferson
Lewiston, ID-WA MSA	504	523	655	930	1133	Nez Perce
Logan, UT-ID MSA	502	542	677	908	1121	Franklin
Pocatello, ID MSA	416	484	624	902	1057	Bannock, Power

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	487	507	639	865	1031
Benewah	559	569	715	1022	1053
Blaine	809	879	976	1386	1711
Boundary	559	569	715	1022	1053
Camas	496	543	677	892	955
Cassia	496	543	677	892	955
Clearwater	496	512	635	916	1057
Elmore	422	492	647	820	1005
Gooding	496	543	677	892	955
Jerome	496	543	677	892	955
Lemhi	464	496	634	896	1065
Lincoln	496	543	677	892	955
Minidoka	384	505	592	784	806
Payette	419	504	641	812	1060
Teton	464	496	634	896	1065
Valley	487	507	639	865	1031
Bear Lake	416	479	613	871	1028
Bingham	420	465	596	820	847
Bonner	566	593	728	1030	1061
Butte	464	496	634	896	1065
Caribou	416	479	613	871	1028
Clark	464	496	634	896	1065
Custer	464	496	634	896	1065
Fremont	464	496	634	896	1065
Idaho	484	518	683	817	966
Latah	498	520	628	916	1059
Lewis	496	512	635	916	1057
Madison	460	461	592	860	935
Oneida	416	479	613	871	1028
Shoshone	490	491	592	780	826
Twin Falls	448	544	689	888	1051
Washington	487	507	639	865	1031

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	521	575	726	971	1214	McLean
Bond County, IL HMFA	412	441	572	832	978	Bond
Cape Girardeau-Jackson, MO-IL MSA	398	453	592	766	941	Alexander
Champaign-Urbana, IL MSA	498	606	713	895	1229	Champaign, Ford, Piatt
*Chicago-Joliet-Naperville, IL HMFA	784	897	1008	1232	1392	Cook, DuPage, Kane, Lake, McHenry, Will
Danville, IL MSA	393	470	605	724	768	Vermilion
Davenport-Moline-Rock Island, IA-IL MSA	451	503	634	808	843	Henry, Mercer, Rock Island
DeKalb County, IL HMFA	574	648	852	1105	1356	DeKalb
Decatur, IL MSA	412	490	622	829	855	Macon

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Grundy County, IL HMFA	578	678	888	1118	1505	Grundy
Kankakee-Bradley, IL MSA	505	550	725	940	1008	Kankakee
Kendall County, IL HMFA	805	806	969	1362	1476	Kendall
Macoupin County, IL HMFA	534	535	643	801	829	Macoupin
Peoria, IL MSA	458	542	675	869	987	Marshall, Peoria, Stark, Tazewell, Woodford
Rockford, IL MSA	503	567	718	939	967	Boone, Winnebago
Springfield, IL MSA	442	519	671	876	978	Menard, Sangamon
St. Louis, MO-IL HMFA	589	639	794	1023	1070	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	370	440	569	739	763	Brown	369	448	569	760	783
Bureau	402	467	617	760	834	Carroll	432	488	615	766	788
Cass	450	452	569	723	745	Christian	372	476	569	735	860
Clark	368	514	569	828	855	Clay	373	465	569	760	781
Coles	393	503	605	853	1062	Crawford	371	438	569	748	785
Cumberland	394	490	592	788	1038	De Witt	468	469	572	747	874
Douglas	384	482	592	842	868	Edgar	370	433	569	716	737
Edwards	464	472	569	749	826	Effingham	500	501	603	762	805
Fayette	472	485	569	787	812	Franklin	368	452	569	706	998
Fulton	395	472	569	728	902	Gallatin	464	472	569	749	826
Greene	391	436	572	725	761	Hamilton	464	472	569	749	826
Hancock	475	476	569	684	707	Hardin	464	472	569	749	826
Henderson	393	459	569	719	859	Iroquois	423	470	569	716	839
Jackson	385	470	592	806	1003	Jasper	369	458	569	749	770
Jefferson	485	498	594	747	770	Jo Daviess	447	479	569	758	782
Johnson	464	472	569	749	826	Knox	392	458	603	801	826
La Salle	470	507	668	843	1084	Lawrence	369	432	569	757	781
Lee	409	503	604	806	939	Livingston	422	518	651	777	809
Logan	488	489	585	803	921	McDonough	384	452	569	729	954
Marion	415	476	569	728	801	Mason	369	468	569	799	824
Massac	473	474	569	828	855	Montgomery	473	474	569	682	845
Morgan	401	466	614	762	827	Moultrie	380	449	584	736	894
Ogle	484	517	677	886	946	Perry	369	483	569	687	883
Pike	369	451	569	765	788	Pope	464	472	569	749	826
Pulaski	464	472	569	749	826	Putnam	385	450	592	748	818
Randolph	370	432	569	754	925	Richland	424	513	569	784	938
Saline	370	477	569	770	998	Schuyler	369	451	569	765	788
Scott	391	436	572	725	761	Shelby	472	473	569	741	839
Stephenson	427	499	658	787	812	Union	473	475	569	698	867
Wabash	464	472	569	749	826	Warren	370	433	569	710	810
Washington	394	451	569	731	753	Wayne	369	448	569	724	745
White	464	472	569	749	826	Whiteside	435	513	632	782	804
Williamson	372	434	569	820	845						

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, IN MSA	572	572	688	885	921	Madison
Bloomington, IN HMFA	486	563	687	976	1009	Monroe
Carroll County, IN HMFA	415	488	640	842	867	Carroll
Cincinnati-Middleton, OH-KY-IN HMFA	488	578	749	1003	1041	Dearborn, Franklin, Ohio
Columbus, IN MSA	660	661	794	973	1042	Bartholomew
Elkhart-Goshen, IN MSA	545	608	751	944	989	Elkhart
Evansville, IN-KY HMFA	440	513	638	787	856	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	460	489	611	762	783	Allen, Wells, Whitley
Gary, IN HMFA	532	663	809	967	997	Lake, Newton, Porter
Gibson County, IN HMFA	495	497	594	760	1045	Gibson
Greene County, IN HMFA	459	461	592	859	888	Greene
Indianapolis, IN HMFA	553	640	760	983	1040	Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby
Jasper County, IN HMFA	589	591	734	957	986	Jasper
Kokomo, IN MSA	550	556	706	900	926	Howard, Tipton
Lafayette, IN HMFA	546	645	792	1031	1179	Benton, Tippecanoe
Louisville, KY-IN HMFA	509	588	698	975	1036	Clark, Floyd, Harrison
Michigan City-La Porte, IN MSA	471	545	691	918	944	LaPorte
Muncie, IN MSA	564	576	697	939	986	Delaware
Owen County, IN HMFA	506	509	609	771	1069	Owen
Putnam County, IN HMFA	562	563	678	810	913	Putnam
South Bend-Mishawaka, IN HMFA	539	600	722	926	954	St. Joseph
Sullivan County, IN HMFA	384	450	592	708	729	Sullivan
Terre Haute, IN HMFA	421	480	618	762	877	Clay, Vermillion, Vigo
Washington County, IN HMFA	451	504	592	728	970	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	492	533	592	774	913	Blackford	504	506	607	772	835
Cass	429	462	607	773	798	Clinton	524	555	679	848	889
Crawford	422	481	592	732	776	Daviess	492	495	592	770	944
Decatur	569	571	686	889	916	DeKalb	484	519	658	905	930
Dubois	397	476	610	833	857	Fayette	404	499	620	821	844
Fountain	435	523	592	792	828	Fulton	504	523	607	857	884
Grant	516	518	625	789	920	Henry	535	538	644	828	926
Huntington	461	549	649	810	981	Jackson	552	553	673	865	1049
Jay	384	471	592	802	828	Jefferson	438	469	618	740	915
Jennings	425	502	656	794	1094	Knox	411	469	592	733	915
Kosciusko	447	522	686	873	1016	LaGrange	543	545	653	787	874
Lawrence	427	505	658	786	809	Marshall	466	538	668	880	908
Martin	422	465	592	729	852	Miami	384	452	592	862	929
Montgomery	435	512	652	887	935	Noble	579	581	698	834	858
Orange	382	449	592	745	813	Parke	493	495	592	746	939
Perry	385	451	592	768	793	Pike	384	454	592	766	790
Pulaski	508	509	613	813	840	Randolph	492	493	592	844	871
Ripley	562	564	679	818	936	Rush	533	534	642	769	843
Scott	444	497	629	813	941	Spencer	384	454	592	766	790

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

INDIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starke	510	538	616	814	856
Switzerland	465	504	663	830	926
Wabash	387	451	592	809	922
Wayne	421	496	621	843	869

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Steuben	493	562	739	891	917
Union	417	509	643	801	827
Warren	419	515	645	793	921
White	447	618	686	820	1158

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ames, IA MSA	577	608	752	1076	1273	Story
Benton County, IA HMFA	366	432	564	702	940	Benton
Bremer County, IA HMFA	371	457	569	681	921	Bremer
Cedar Rapids, IA HMFA	443	515	679	962	1093	Linn
Davenport-Moline-Rock Island, IA-IL MSA	451	503	634	808	843	Scott
Des Moines-West Des Moines, IA MSA	508	606	739	947	1055	Dallas, Guthrie, Madison, Polk, Warren
Dubuque, IA MSA	424	457	600	806	878	Dubuque
Iowa City, IA HMFA	504	601	758	1104	1292	Johnson
Jones County, IA HMFA	469	470	564	791	815	Jones
Omaha-Council Bluffs, NE-IA HMFA	527	599	747	997	1026	Harrison, Mills, Pottawattamie
Sioux City, IA-NE-SD MSA	439	515	676	851	876	Woodbury
Washington County, IA HMFA	373	449	571	729	875	Washington
Waterloo-Cedar Falls, IA HMFA	426	523	626	768	941	Black Hawk, Grundy

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	385	429	564	688	769
Allamakee	400	440	564	731	778
Audubon	421	433	564	742	776
Buchanan	468	469	564	728	747
Butler	400	440	564	731	778
Carroll	383	446	589	703	724
Cedar	399	440	581	751	813
Cherokee	421	433	564	742	776
Clarke	386	441	579	693	772
Clayton	400	440	564	731	778
Crawford	421	446	564	742	776
Decatur	385	429	564	688	769
Des Moines	438	478	606	762	858
Emmet	396	428	564	690	810
Floyd	396	428	564	706	726
Fremont	421	514	646	792	853
Hamilton	438	439	564	711	743
Hardin	483	485	580	694	738
Howard	400	440	564	731	778
Ida	421	433	564	742	776
Jackson	399	440	581	751	813

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	385	429	564	688	769
Appanoose	366	428	564	712	781
Boone	421	508	647	842	906
Buena Vista	439	444	581	697	800
Calhoun	447	448	564	725	758
Cass	421	514	646	792	853
Cerro Gordo	427	474	624	775	797
Chickasaw	400	440	564	731	778
Clay	366	428	564	685	858
Clinton	366	429	564	719	821
Davis	385	429	564	688	769
Delaware	399	440	581	751	813
Dickinson	365	451	564	713	989
Fayette	400	440	564	731	778
Franklin	407	448	564	721	756
Greene	421	433	564	742	776
Hancock	407	448	564	721	756
Henry	475	477	571	817	841
Humboldt	447	448	564	725	758
Iowa	437	462	573	749	774
Jasper	440	480	631	803	837

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jefferson	472	480	568	715	870
Kossuth	407	448	564	721	756
Louisa	433	485	599	775	820
Lyon	396	428	564	690	810
Marion	421	517	646	798	821
Mitchell	407	448	564	721	756
Monroe	385	429	564	688	769
Muscatine	430	531	661	814	877
Osceola	396	428	564	690	810
Palo Alto	396	428	564	690	810
Pocahontas	447	448	564	725	758
Ringgold	385	429	564	688	769
Shelby	421	514	646	792	853
Tama	437	462	573	749	774
Union	385	429	564	688	769
Wapello	402	468	617	736	767
Webster	429	437	568	786	811
Winneshiek	367	429	564	733	993
Wright	447	448	564	725	758

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Keokuk	385	429	564	688	769
Lee	411	478	564	715	735
Lucas	385	429	564	688	769
Mahaska	417	473	602	721	952
Marshall	431	500	624	802	921
Monona	421	433	564	742	776
Montgomery	421	514	646	792	853
O'Brien	396	428	564	690	810
Page	364	429	564	673	693
Plymouth	468	469	564	760	782
Poweshiek	393	459	604	772	795
Sac	421	433	564	742	776
Sioux	458	465	564	763	785
Taylor	385	429	564	688	769
Van Buren	385	429	564	688	769
Wayne	385	429	564	688	769
Winnebago	407	448	564	721	756
Worth	407	448	564	721	756

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Franklin County, KS HMFA	533	534	662	843	902	Franklin
*Kansas City, MO-KS HMFA	600	720	827	1119	1177	Johnson, Leavenworth, Linn, Miami, Wyandotte
Lawrence, KS MSA	570	586	753	1099	1322	Douglas
Manhattan, KS MSA	442	509	618	860	1011	Geary, Pottawatomie, Riley
St. Joseph, MO-KS MSA	386	477	593	747	885	Doniphan
Sumner County, KS HMFA	373	438	576	775	902	Sumner
Topeka, KS MSA	500	544	666	844	888	Jackson, Jefferson, Osage, Shawnee, Wabaunsee
Wichita, KS HMFA	424	475	624	798	897	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	433	438	575	762	829
Atchison	454	506	620	903	1089
Barton	373	450	575	764	990
Brown	454	506	620	903	1089
Chautauqua	416	462	575	741	806
Cheyenne	431	437	575	736	757
Clay	448	492	605	776	956
Coffey	401	438	575	731	754
Cowley	384	470	575	729	750
Decatur	431	437	575	736	757

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	416	462	575	741	806
Barber	374	440	575	749	883
Bourbon	417	443	575	831	936
Chase	401	438	575	731	754
Cherokee	480	497	575	805	988
Clark	501	506	616	750	822
Cloud	449	457	578	759	784
Comanche	374	440	575	749	883
Crawford	410	480	631	850	948
Dickinson	374	436	575	692	853

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 15

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Edwards	374	440	575	749	883
Ellis	414	469	617	853	893
Finney	509	509	657	798	1010
Gove	431	437	575	736	757
Grant	501	506	616	750	822
Greeley	501	506	616	750	822
Hamilton	501	506	616	750	822
Haskell	501	506	616	750	822
Jewell	449	457	578	759	784
Kingman	374	440	575	749	883
Labette	374	447	575	779	802
Lincoln	449	457	578	759	784
Lyon	374	438	575	768	909
Marion	401	438	575	731	754
Meade	501	506	616	750	822
Montgomery	412	460	575	707	880
Morton	501	506	616	750	822
Neosho	373	448	575	684	1006
Norton	431	437	575	736	757
Ottawa	449	457	578	759	784
Phillips	431	437	575	736	757
Rawlins	431	437	575	736	757
Republic	449	457	578	759	784
Rooks	431	437	575	736	757
Russell	431	437	575	736	757
Scott	501	506	616	750	822
Sheridan	431	437	575	736	757
Smith	431	437	575	736	757
Stanton	501	506	616	750	822
Thomas	428	436	575	731	753
Wallace	431	437	575	736	757
Wichita	501	506	616	750	822
Woodson	416	462	575	741	806

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Elk	416	462	575	741	806
Ellsworth	449	457	578	759	784
Ford	529	530	638	785	839
Graham	431	437	575	736	757
Gray	501	506	616	750	822
Greenwood	401	438	575	731	754
Harper	374	440	575	749	883
Hodgeman	501	506	616	750	822
Kearny	501	506	616	750	822
Kiowa	374	440	575	749	883
Lane	501	506	616	750	822
Logan	431	437	575	736	757
McPherson	478	480	575	753	774
Marshall	448	492	605	776	956
Mitchell	449	457	578	759	784
Morris	448	492	605	776	956
Nemaha	454	506	620	903	1089
Ness	501	506	616	750	822
Osborne	431	437	575	736	757
Pawnee	374	440	575	749	883
Pratt	374	438	575	745	879
Reno	412	459	602	825	849
Rice	418	456	577	765	789
Rush	374	440	575	749	883
Saline	478	480	631	840	866
Seward	434	534	617	758	918
Sherman	423	437	575	722	744
Stafford	374	440	575	749	883
Stevens	501	506	616	750	822
Trego	431	437	575	736	757
Washington	449	457	578	759	784
Wilson	415	461	575	739	804

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bowling Green, KY MSA	458	547	665	886	1045	Edmonson, Warren
Cincinnati-Middleton, OH-KY-IN HMFA	488	578	749	1003	1041	Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton
Clarksville, TN-KY HMFA	548	570	662	957	985	Christian, Trigg
Elizabethtown, KY MSA	423	471	568	808	995	Hardin, Larue
Evansville, IN-KY HMFA	440	513	638	787	856	Henderson, Webster
Grant County, KY HMFA	462	558	710	874	979	Grant

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Huntington-Ashland, WV-KY-OH MSA	417	493	592	730	754	Boyd, Greenup
Lexington-Fayette, KY MSA	477	573	707	950	980	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN HMFA	509	588	698	975	1036	Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble
Meade County, KY HMFA	485	486	582	747	837	Meade
Nelson County, KY HMFA	414	500	605	881	953	Nelson
Owensboro, KY MSA	411	458	602	835	884	Daviess, Hancock, McLean
Shelby County, KY HMFA	578	580	700	921	949	Shelby

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	381	423	503	613	684	Allen	329	428	503	672	869
Anderson	484	518	684	989	1179	Ballard	413	456	562	720	812
Barren	347	406	526	656	722	Bath	393	426	526	657	679
Bell	330	451	503	600	736	Boyle	422	466	613	734	758
Breathitt	417	439	503	625	653	Breckinridge	411	413	531	710	732
Butler	450	534	650	855	880	Caldwell	418	419	503	637	723
Calloway	500	501	602	742	1057	Carlisle	413	456	562	720	812
Carroll	495	496	616	814	885	Carter	328	437	506	603	682
Casey	381	423	503	613	684	Clay	326	452	503	600	618
Clinton	381	423	503	613	684	Crittenden	417	419	503	657	746
Cumberland	381	423	503	613	684	Elliott	440	441	531	675	798
Estill	417	419	503	643	847	Fleming	393	426	526	657	679
Floyd	381	427	503	660	761	Franklin	497	527	693	940	966
Fulton	413	456	562	720	812	Garrard	424	474	569	679	996
Graves	404	405	503	601	732	Grayson	418	420	503	656	770
Green	379	420	503	608	679	Harlan	416	448	503	619	782
Harrison	432	435	568	745	769	Hart	374	408	503	642	747
Hickman	413	456	562	720	812	Hopkins	417	418	503	631	882
Jackson	417	439	503	608	626	Johnson	328	428	503	686	705
Knott	417	439	503	629	653	Knox	329	398	503	709	733
Laurel	417	452	503	618	845	Lawrence	326	381	503	672	692
Lee	417	439	503	629	653	Leslie	417	439	503	629	653
Letcher	417	439	503	625	653	Lewis	393	426	526	657	679
Lincoln	363	497	551	660	872	Livingston	416	417	503	647	735
Logan	445	483	537	735	815	Lyon	490	498	591	767	794
McCracken	377	475	583	782	806	McCreary	418	451	503	648	665
Madison	432	458	587	828	971	Magoffin	418	422	503	619	647
Marion	411	413	531	710	732	Marshall	451	452	545	710	924
Martin	418	422	503	619	647	Mason	339	433	524	765	878
Menifee	393	426	526	657	679	Mercer	459	489	554	730	859
Metcalfe	374	408	503	642	747	Monroe	374	408	503	642	747
Montgomery	404	471	621	741	764	Morgan	393	426	526	657	679
Muhlenberg	415	416	503	639	656	Nicholas	515	516	675	827	911
Ohio	415	442	503	667	732	Owen	550	627	716	964	1255

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Owsley	417	439	503	629	653
Pike	427	428	515	618	636
Pulaski	357	395	503	621	657
Rockcastle	417	439	503	608	626
Russell	381	423	503	613	684
Taylor	331	453	503	648	852
Union	443	445	536	652	686
Wayne	329	402	503	652	672
Wolfe	417	439	503	629	653
Perry	417	440	503	602	737
Powell	381	481	588	703	725
Robertson	393	426	526	657	679
Rowan	443	491	546	685	707
Simpson	450	529	695	864	890
Todd	490	498	591	767	794
Washington	411	413	531	710	732
Whitley	384	405	533	636	656

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	493	533	635	826	850	Grant, Rapides
Baton Rouge, LA HMFA	638	694	801	1021	1123	Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana
Houma-Bayou Cane-Thibodaux, LA MSA	546	550	683	897	1022	Lafourche, Terrebonne
Iberville Parish, LA HMFA	484	485	584	791	815	Iberville
Lafayette, LA MSA	570	654	725	930	1180	Lafayette, St. Martin
Lake Charles, LA MSA	533	601	731	902	1270	Calcasieu, Cameron
Monroe, LA MSA	484	548	681	904	932	Ouachita, Union
New Orleans-Metairie-Kenner, LA MSA	767	850	994	1276	1319	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA	552	635	742	942	971	Bossier, Caddo, De Soto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Acadia	455	455	554	700	803
Assumption	520	522	627	765	786
Beauregard	473	485	571	831	1000
Caldwell	437	467	554	701	782
Claiborne	510	519	614	734	803
East Carroll	437	467	554	701	782
Franklin	437	467	554	701	782
Jackson	437	467	554	701	782
La Salle	420	453	554	702	849
Madison	437	467	554	701	782
Natchitoches	533	535	641	768	992
Richland	437	467	554	701	782
St. James	531	620	760	933	961
St. Mary	504	513	617	806	832
Tensas	437	467	554	701	782
Vernon	454	500	554	804	960
Webster	447	448	566	763	787
Winn	460	499	554	699	744
Allen	459	461	554	805	894
Avoyelles	358	488	554	754	901
Bienville	510	519	614	734	803
Catahoula	420	453	554	702	849
Concordia	420	453	554	718	849
Evangeline	458	460	554	710	730
Iberia	526	539	636	785	916
Jefferson Davis	460	461	554	701	720
Lincoln	547	564	657	855	883
Morehouse	471	473	588	705	763
Red River	510	519	614	734	803
Sabine	510	519	614	734	803
St. Landry	362	434	554	748	796
Tangipahoa	481	559	703	842	1000
Vermilion	461	462	554	760	786
Washington	460	464	554	738	760
West Carroll	437	467	554	701	782

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 18

MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME HMFA	548	639	815	1036	1170	Penobscot County towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town
Cumberland County, ME (part) HMFA	597	713	919	1097	1406	Cumberland County towns of Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Lewiston-Auburn, ME MSA	451	565	691	875	969	Androscoggin County towns of Auburn city, Durham town, Greene town, Leeds town, Lewiston city, Lisbon town, Livermore town, Livermore Falls town, Mechanic Falls town, Minot town, Poland town, Sabattus town, Turner town, Wales town
Penobscot County, ME (part) HMFA	559	561	674	843	1033	Penobscot County towns of Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Portland, ME HMFA	729	865	1121	1412	1513	Cumberland County towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town York County towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town
Sagadahoc County, ME HMFA	721	722	866	1045	1500	Sagadahoc County towns of Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town
York County, ME (part) HMFA	659	685	871	1042	1138	York County towns of Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
York-Kittery-South Berwick, ME HMFA	847	852	1022	1488	1622	York County towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Aroostook County, ME	426	525	629	821	905	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Franklin County, ME	528	570	694	829	1076	Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock County, ME	577	665	774	1090	1122	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona town, Waltham town, Winter Harbor town
Kennebec County, ME	457	548	682	931	994	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town,

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox County, ME	523	691	789	1068	1232	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln County, ME	631	678	818	988	1018	Alna town, Boothbay town, Boothbay Harbor town, Bremen town, Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport town, Whitefield town, Wiscasset town
Oxford County, ME	441	586	675	899	1127	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Piscataquis County, ME	548	625	773	981	1050	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Somerset County, ME	439	545	646	912	967	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation
Waldo County, ME	615	660	796	976	1038	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town,

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 21

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Washington County, ME	528	571	681	844	920	Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town, Winterport town Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Baltimore-Towson, MD HMFA	931	1052	1263	1622	2003	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia city, MD HMFA	1352	1406	1631	2217	2582	Columbia city
Cumberland, MD-WV MSA	425	514	603	813	949	Allegany
Hagerstown, MD HMFA	568	651	833	1202	1240	Washington
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	789	900	1077	1317	1589	Cecil
Salisbury, MD HMFA	603	751	882	1093	1253	Wicomico
Somerset County, MD HMFA	595	633	745	922	1211	Somerset
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	1131	1289	1461	1885	2466	Calvert, Charles, Frederick, Montgomery, Prince George's

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	676	699	817	1105	1135
Garrett	424	526	653	842	1117
St. Mary's	854	886	1154	1516	1996
Worcester	725	753	873	1275	1357
Dorchester	509	612	779	1051	1081
Kent	760	761	916	1124	1509
Talbot	791	793	954	1291	1363

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable Town, MA MSA	786	920	1211	1445	1491	Barnstable County towns of Barnstable Town city, Bourne town, Brewster town, Chatham town, Dennis town, Eastham town, Falmouth town, Harwich town, Mashpee town, Orleans town, Provincetown town, Sandwich town, Truro town, Wellfleet town,

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Yarmouth town
Berkshire County, MA (part) HMFA.....	624	701	808	1106	1138	Berkshire County towns of Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Boston-Cambridge-Quincy, MA-NH HMFA.....	1055	1120	1314	1572	1727	Essex County towns of Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex County towns of Acton town, Arlington town, Ashby town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city Norfolk County towns of Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town Plymouth County towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town Suffolk County towns of Boston city, Chelsea city, Revere city, Winthrop town
Brockton, MA HMFA.....	988	1028	1295	1549	1941	Norfolk County towns of Avon town Plymouth County towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Marion town, Mattapoisett town, Middleborough town, Plympton town, Rochester town, West Bridgewater town, Whitman town
Eastern Worcester County, MA HMFA.....	721	806	1061	1268	1862	Worcester County towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town,

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Mendon town, Milford town, Millville town, Southborough town, Upton town
Easton-Raynham, MA HMFA	855	1133	1318	1576	2279	Bristol County towns of Easton town, Raynham town
Fitchburg-Leominster, MA HMFA	702	807	1012	1239	1346	Worcester County towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Franklin County, MA (part) HMFA	628	733	908	1211	1463	Franklin County towns of Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Lawrence, MA-NH HMFA	760	967	1169	1396	1439	Essex County towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA HMFA	855	1023	1315	1570	1723	Middlesex County towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA HMFA	599	768	879	1053	1420	Bristol County towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA HMFA	588	687	852	1095	1128	Berkshire County towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence-Fall River, RI-MA HMFA	766	852	982	1173	1447	Bristol County towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA HMFA	588	699	888	1063	1233	Franklin County towns of Sunderland town Hampden County towns of Agawam city, Blandford town, Brimfield town, Chester town, Chicopee city, East Longmeadow town, Granville town, Hampden town, Holland town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Tolland town, Wales town, Westfield city, West Springfield town, Wilbraham town Hampshire County towns of Amherst town, Belchertown town, Chesterfield town, Cummington town, Easthampton city, Goshen town, Granby town, Hadley town, Hatfield town, Huntington town, Middlefield town, Northampton city, Pelham town, Plainfield town, Southampton town, South Hadley town, Ware town, Westhampton town, Williamsburg town, Worthington town
Taunton-Mansfield-Norton, MA HMFA	739	932	1138	1396	1507	Bristol County towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Western Worcester County, MA HMFA	569	781	876	1045	1343	Worcester County towns of Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town
Worcester, MA HMFA	704	810	986	1179	1250	Worcester County towns of Auburn town, Barre town,

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Dukes County, MA	944	1198	1426	1704	1757	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Nantucket County, MA	1105	1530	1698	2031	2092	Nantucket town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI MSA	690	774	942	1185	1220	Washtenaw
Barry County, MI HMFA	427	538	658	948	1044	Barry
Battle Creek, MI MSA	476	546	668	814	838	Calhoun
Bay City, MI MSA	439	491	596	796	819	Bay
Cass County, MI HMFA	483	552	611	810	940	Cass
Detroit-Warren-Livonia, MI HMFA	597	681	814	974	1004	Lapeer, Macomb, Oakland, St. Clair, Wayne
Flint, MI MSA	495	523	628	778	803	Genesee
*Grand Rapids-Wyoming, MI HMFA	567	606	730	931	976	Kent
Holland-Grand Haven, MI MSA	598	607	729	1009	1089	Ottawa
Ionia County, MI HMFA	455	527	643	770	857	Ionia
Jackson, MI MSA	496	554	661	822	846	Jackson
Kalamazoo-Portage, MI MSA	513	547	665	884	922	Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	551	599	741	939	1018	Clinton, Eaton, Ingham
Livingston County, MI HMFA	706	745	876	1263	1537	Livingston
Monroe, MI MSA	631	633	762	995	1096	Monroe
Muskegon-Norton Shores, MI MSA	443	462	600	793	816	Muskegon
Newaygo County, MI HMFA	502	530	605	819	842	Newaygo
Niles-Benton Harbor, MI MSA	466	522	637	779	999	Berrien
Saginaw-Saginaw Township North, MI MSA	459	525	663	794	816	Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	412	477	584	787	833	Alger	386	489	584	720	811
Allegan	475	573	687	861	923	Alpena	461	524	584	807	892
Antrim	493	494	596	828	1045	Arenac	464	489	584	781	865
Baraga	386	489	584	720	811	Benzie	611	611	741	926	952
Branch	473	505	664	796	819	Charlevoix	518	560	621	893	922
Cheboygan	407	473	584	784	824	Chippewa	380	473	584	708	793

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clare	428	444	584	787	811
Delta	405	482	584	769	815
Emmet	434	534	665	896	948
Gogebic	403	482	584	714	849
Gratiot	487	488	584	778	870
Houghton	415	486	584	759	870
Iosco	477	505	584	849	881
Isabella	485	524	584	840	917
Keweenaw	403	482	584	714	849
Leelanau	611	611	741	926	952
Luce	403	492	584	766	835
Manistee	455	471	618	740	829
Mason	380	446	584	764	840
Menominee	485	486	584	770	1027
Missaukee	438	527	621	816	897
Montmorency	402	467	584	769	814
Ogemaw	449	472	584	755	835
Osceola	485	486	584	799	1007
Otsego	466	544	716	858	902
Roscommon	485	487	584	759	934
Sanilac	486	524	584	822	845
Shiawassee	407	500	623	858	956
Wexford	398	526	613	811	894

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crawford	403	468	584	770	816
Dickinson	380	461	584	704	960
Gladwin	464	489	584	781	865
Grand Traverse	624	626	784	1026	1058
Hillsdale	400	492	586	824	901
Huron	485	488	584	774	940
Iron	403	482	584	714	849
Kalkaska	489	532	590	716	739
Lake	447	489	584	764	920
Lenawee	441	553	679	866	945
Mackinac	380	472	584	704	767
Marquette	378	491	584	735	798
Mecosta	416	496	600	797	1052
Midland	464	528	651	897	958
Montcalm	440	510	584	788	813
Oceana	423	490	584	707	753
Ontonagon	403	482	584	714	849
Oscoda	412	477	584	787	833
Presque Isle	412	477	584	787	833
St. Joseph	471	525	619	764	857
Schoolcraft	403	492	584	766	835
Tuscola	410	468	594	713	852

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth, MN-WI MSA	412	502	633	795	1013	Carlton, St. Louis
Fargo, ND-MN MSA	405	481	612	883	1021	Clay
Grand Forks, ND-MN MSA	417	523	642	813	1106	Polk
La Crosse, WI-MN MSA	415	486	639	848	1042	Houston
Mankato-North Mankato, MN MSA	507	590	685	955	1108	Blue Earth, Nicollet
Minneapolis-St. Paul-Bloomington, MN-WI MSA	635	748	908	1189	1336	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN HMFA	612	654	859	1114	1163	Dodge, Olmsted
St. Cloud, MN MSA	504	555	665	940	1092	Benton, Stearns
Wabasha County, MN HMFA	420	467	599	749	1052	Wabasha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	423	497	653	815	882
Beltrami	410	484	616	847	1081
Brown	437	497	597	715	735
Chippewa	453	493	592	708	731
Cook	384	488	592	742	764

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	384	455	592	741	770
Big Stone	384	467	592	757	783
Cass	384	491	592	747	768
Clearwater	414	467	592	747	1038
Cottonwood	433	474	592	755	790

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crow Wing	437	511	674	865	1011	Douglas	417	496	624	904	989
Faribault	433	474	592	755	790	Fillmore	407	490	611	797	1000
Freeborn	384	450	592	706	931	Goodhue	472	554	728	927	1002
Grant	384	467	592	757	783	Hubbard	414	467	592	747	1038
Itasca	400	495	616	746	875	Jackson	433	474	592	755	790
Kanabec	454	532	699	872	943	Kandiyohi	476	488	605	815	840
Kittson	390	466	592	754	883	Koochiching	384	491	592	747	768
Lac qui Parle	453	493	592	708	731	Lake	384	488	592	742	764
Lake of the Woods	414	467	592	747	1038	Le Sueur	525	542	652	908	936
Lincoln	453	493	592	708	731	Lyon	451	506	623	777	799
McLeod	549	550	682	977	1008	Mahnomen	414	467	592	747	1038
Marshall	390	466	592	754	883	Martin	491	492	592	860	886
Meeker	474	525	609	796	818	Mille Lacs	489	503	663	821	912
Morrison	395	470	608	727	1067	Mower	396	464	592	735	758
Murray	433	474	592	755	790	Nobles	390	488	592	786	810
Norman	390	466	592	754	883	Otter Tail	386	459	592	722	744
Pennington	387	455	592	748	816	Pine	473	513	663	866	894
Pipestone	433	474	592	755	790	Pope	384	467	592	757	783
Red Lake	390	466	592	754	883	Redwood	453	493	592	708	731
Renville	474	494	609	796	818	Rice	575	600	790	944	1097
Rock	433	474	592	755	790	Roseau	384	456	592	738	864
Sibley	474	494	609	796	818	Steele	460	558	705	887	1156
Stevens	385	483	592	713	963	Swift	384	467	592	757	783
Todd	426	479	592	715	950	Traverse	384	467	592	757	783
Wadena	426	479	592	715	950	Waseca	423	497	653	781	816
Watonwan	433	474	592	755	790	Wilkin	384	467	592	757	783
Winona	431	509	664	918	1165	Yellow Medicine	453	493	592	708	731

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Gulfport-Biloxi, MS MSA	709	751	877	1143	1174	Hancock, Harrison, Stone
Hattiesburg, MS MSA	479	546	650	946	977	Forrest, Lamar, Perry
Jackson, MS HMFA	583	659	764	919	947	Copiah, Hinds, Madison, Rankin
Marshall County, MS HMFA	380	475	587	857	883	Marshall
Memphis, TN-MS-AR HMFA	628	682	758	1010	1041	DeSoto
Pascagoula, MS MSA	609	696	836	1151	1235	George, Jackson
Simpson County, MS HMFA	485	512	586	702	1014	Simpson
Tate County, MS HMFA	483	560	623	873	1094	Tate
Tunica County, MS HMFA	496	597	765	919	1127	Tunica

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	385	532	591	709	1015
Amite	446	501	558	675	767
Benton	508	568	630	756	776
Calhoun	458	472	558	748	936
Chickasaw	421	518	606	726	763
Claiborne	464	465	558	700	820
Clay	463	464	558	813	839
Covington	464	465	558	700	820
Greene	423	453	558	729	767
Holmes	471	544	606	725	759
Issaquena	471	544	606	725	759
Jasper	439	474	558	671	714
Jefferson Davis	464	465	558	700	820
Kemper	464	515	592	775	802
Lauderdale	470	526	617	848	874
Leake	439	474	558	671	714
Leflore	362	425	558	741	872
Lowndes	488	500	586	851	878
Monroe	463	493	558	698	747
Neshoba	361	487	558	664	976
Noxubee	469	487	566	775	827
Panola	362	501	558	668	771
Pike	463	502	558	734	757
Prentiss	363	422	558	669	689
Scott	464	493	558	668	720
Smith	439	474	558	671	714
Tallahatchie	377	422	558	740	775
Tishomingo	362	472	558	701	724
Walthall	446	501	558	675	767
Washington	385	501	591	767	938
Webster	458	472	558	748	936
Winston	421	518	606	726	763
Yazoo	462	490	558	666	689

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcorn	464	500	558	775	981
Attala	458	472	558	748	936
Bolivar	454	514	591	709	1039
Carroll	377	422	558	740	775
Choctaw	458	472	558	748	936
Clarke	464	515	592	775	802
Coahoma	474	490	647	773	1136
Franklin	446	501	558	675	767
Grenada	435	477	558	786	935
Humphreys	377	422	558	740	775
Itawamba	362	493	558	737	870
Jefferson	464	465	558	700	820
Jones	377	438	558	735	759
Lafayette	499	590	728	872	898
Lawrence	464	465	558	700	820
Lee	507	528	609	831	937
Lincoln	407	502	558	765	980
Marion	439	498	558	733	834
Montgomery	458	472	558	748	936
Newton	464	515	592	775	802
Oktibbeha	443	538	655	853	878
Pearl River	566	567	679	829	1169
Pontotoc	463	464	558	759	781
Quitman	455	487	574	688	862
Sharkey	471	544	606	725	759
Sunflower	405	498	558	795	820
Tippah	463	503	558	727	905
Union	378	526	583	698	845
Warren	566	622	694	829	854
Wayne	423	453	558	729	767
Wilkinson	446	501	558	675	767
Yalobusha	458	472	558	748	936

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bates County, MO HMFA	370	435	568	797	824	Bates
Calloway County, MO HMFA	454	459	580	792	816	Callaway
Cape Girardeau-Jackson, MO-IL MSA	398	453	592	766	941	Bollinger, Cape Girardeau
Columbia, MO MSA	441	527	655	954	1064	Boone, Howard
Dallas County, MO HMFA	346	450	532	726	750	Dallas
Jefferson City, MO HMFA	410	450	585	829	921	Cole, Osage

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Joplin, MO MSA	385	462	588	749	770	Jasper, Newton
*Kansas City, MO-KS HMFA	600	720	827	1119	1177	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
McDonald County, MO HMFA	424	425	533	758	783	McDonald
Moniteau County, MO HMFA	351	410	541	654	872	Moniteau
Polk County, MO HMFA	353	412	542	790	906	Polk
Springfield, MO HMFA	394	465	594	846	967	Christian, Greene, Webster
St. Joseph, MO-KS MSA	386	477	593	747	885	Andrew, Buchanan, DeKalb
St. Louis, MO-IL HMFA	589	639	794	1023	1070	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA	414	482	541	712	794	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	385	447	590	775	856	Atchison	427	428	532	662	820
Audrain	440	442	532	671	853	Barry	347	437	532	694	717
Barton	346	436	532	644	707	Benton	346	412	532	738	765
Butler	440	441	532	737	788	Camden	488	495	608	886	911
Carroll	465	466	589	739	825	Carter	441	442	532	739	795
Cedar	346	412	532	738	765	Chariton	465	466	589	739	825
Clark	392	403	532	658	776	Cooper	425	447	581	775	902
Crawford	346	439	532	708	933	Dade	408	430	565	723	781
Daviess	427	428	532	662	820	Dent	398	433	532	702	892
Douglas	393	440	532	704	816	Dunklin	412	448	532	680	759
Gasconade	378	411	532	666	847	Gentry	427	428	532	662	820
Grundy	427	428	532	662	820	Harrison	427	428	532	662	820
Henry	385	447	590	708	729	Hickory	346	412	532	738	765
Holt	427	428	532	662	820	Howell	366	420	532	660	934
Iron	391	439	577	737	853	Johnson	467	498	604	808	908
Knox	392	403	532	658	776	Laclede	436	437	532	696	912
Lawrence	441	442	532	724	835	Lewis	392	403	532	658	776
Linn	392	403	532	658	776	Livingston	418	419	532	711	930
Macon	430	431	532	637	685	Madison	391	439	577	737	853
Maries	398	433	532	702	892	Marion	350	408	538	700	720
Mercer	427	428	532	662	820	Miller	444	445	532	710	740
Mississippi	373	405	532	702	810	Monroe	351	410	541	695	715
Montgomery	351	410	541	695	715	Morgan	453	454	545	740	862
New Madrid	379	435	532	710	730	Nodaway	472	474	589	704	822
Oregon	393	440	532	704	816	Ozark	393	440	532	704	816
Pemiscot	347	406	532	669	688	Perry	396	431	565	677	994
Pettis	465	466	604	753	902	Phelps	395	426	534	739	909
Pike	346	405	533	698	762	Pulaski	457	494	549	798	873
Putnam	392	403	532	658	776	Ralls	351	410	541	695	715
Randolph	360	423	554	702	722	Reynolds	441	442	532	739	795

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ripley	441	442	532	739	795
Ste. Genevieve	391	439	577	737	853
Saline	354	415	546	708	831
Scotland	392	403	532	658	776
Shannon	393	440	532	704	816
Stoddard	412	428	532	725	784
Sullivan	392	403	532	658	776
Texas	420	443	532	733	844
Wayne	441	442	532	739	795
Wright	390	409	532	671	691
St. Clair	346	412	532	738	765
St. Francois	461	464	558	779	811
Schuyler	392	403	532	658	776
Scott	442	443	555	692	818
Shelby	392	403	532	658	776
Stone	395	459	607	796	876
Taney	506	507	640	764	972
Vernon	371	441	534	748	771
Worth	427	428	532	662	820

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	438	520	673	908	1093	Carbon, Yellowstone
Great Falls, MT MSA	400	481	617	834	1004	Cascade
Missoula, MT MSA	517	596	752	975	1166	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	484	564	741	959	1162
Blaine	391	467	592	789	901
Carter	481	498	592	798	849
Custer	386	536	592	862	892
Dawson	481	498	592	798	849
Fallon	481	498	592	798	849
Flathead	436	536	673	952	1167
Garfield	481	498	592	798	849
Golden Valley	481	498	592	798	849
Hill	385	474	592	854	906
Judith Basin	391	467	592	789	901
Lewis and Clark	465	532	664	964	995
Lincoln	418	513	641	887	994
Madison	484	564	741	959	1162
Mineral	517	586	735	942	1127
Park	460	537	706	844	1116
Phillips	481	498	592	798	849
Powder River	481	498	592	798	849
Prairie	481	498	592	798	849
Richland	481	498	592	798	849
Rosebud	440	457	592	731	778
Sheridan	481	498	592	798	849
Stillwater	481	498	592	798	849
Teton	391	467	592	789	901
Big Horn	442	459	592	733	782
Broadwater	431	495	629	850	913
Chouteau	391	467	592	789	901
Daniels	481	498	592	798	849
Deer Lodge	431	495	629	850	913
Fergus	432	450	592	717	764
Gallatin	492	586	762	1017	1335
Glacier	391	467	592	789	901
Granite	431	495	629	850	913
Jefferson	431	495	629	850	913
Lake	513	516	625	843	908
Liberty	391	467	592	789	901
McCone	481	498	592	798	849
Meagher	484	564	741	959	1162
Musselshell	481	498	592	798	849
Petroleum	481	498	592	798	849
Pondera	391	467	592	789	901
Powell	431	495	629	850	913
Ravalli	490	534	686	899	1063
Roosevelt	481	498	592	798	849
Sanders	418	513	641	887	994
Silver Bow	428	460	592	774	847
Sweet Grass	481	498	592	798	849
Toole	391	467	592	789	901

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 30

MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Treasure	481	498	592	798	849	Valley	481	498	592	798	849
Wheatland	481	498	592	798	849	Wibaux	481	498	592	798	849

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE HMFA	445	500	636	892	1081	Lancaster
Omaha-Council Bluffs, NE-IA HMFA	527	599	747	997	1026	Cass, Douglas, Sarpy, Washington
Saunders County, NE HMFA	550	553	664	968	997	Saunders
Seward County, NE HMFA	348	430	537	714	905	Seward
Sioux City, IA-NE-SD MSA	439	515	676	851	876	Dakota, Dixon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	374	436	574	726	747	Antelope	446	447	537	673	695
Arthur	405	468	537	709	731	Banner	402	408	537	697	836
Blaine	448	449	539	666	777	Boone	446	447	537	673	695
Box Butte	402	408	537	703	836	Boyd	402	408	537	697	836
Brown	402	408	537	697	836	Buffalo	404	473	622	846	983
Burt	446	447	537	673	695	Butler	446	447	537	681	714
Cedar	446	447	537	673	695	Chase	405	468	537	709	731
Cherry	402	408	537	697	836	Cheyenne	402	408	537	697	836
Clay	378	442	582	744	864	Colfax	446	447	537	673	695
Cuming	446	447	537	673	695	Custer	448	449	539	666	777
Dawes	347	409	537	643	800	Dawson	463	502	559	680	701
Deuel	402	408	537	697	836	Dodge	426	499	656	783	956
Dundy	405	468	537	709	731	Fillmore	446	447	537	681	714
Franklin	378	442	582	744	864	Frontier	405	468	537	709	731
Furnas	405	468	537	709	731	Gage	446	447	537	655	675
Garden	402	408	537	697	836	Garfield	448	449	539	666	777
Gosper	405	468	537	709	731	Grant	405	468	537	709	731
Greeley	448	449	539	666	777	Hall	454	455	570	713	922
Hamilton	448	449	539	666	777	Harlan	378	442	582	744	864
Hayes	405	468	537	709	731	Hitchcock	405	468	537	709	731
Holt	402	408	537	697	836	Hooker	405	468	537	709	731
Howard	448	449	539	666	777	Jefferson	446	447	537	681	714
Johnson	446	447	537	681	714	Kearney	378	442	582	744	864
Keith	405	468	537	709	731	Keya Paha	402	408	537	697	836
Kimball	402	408	537	697	836	Knox	446	447	537	673	695
Lincoln	392	441	561	688	866	Logan	405	468	537	709	731
Loup	448	449	539	666	777	McPherson	405	468	537	709	731
Madison	397	419	551	751	775	Merrick	448	449	539	666	777
Morrill	402	408	537	697	836	Nance	446	447	537	673	695
Nemaha	446	447	537	681	714	Nuckolls	378	442	582	744	864

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 31

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Otoe	446	448	537	665	698
Perkins	405	468	537	709	731
Pierce	446	447	537	673	695
Polk	446	447	537	681	714
Richardson	446	447	537	681	714
Saline	474	500	571	698	721
Sheridan	402	408	537	697	836
Sioux	402	408	537	697	836
Thayer	446	447	537	681	714
Thurston	446	447	537	673	695
Wayne	446	447	537	673	695
Wheeler	448	449	539	666	777
Pawnee	446	447	537	681	714
Phelps	378	442	582	744	864
Platte	447	448	537	783	807
Red Willow	371	484	537	781	806
Rock	402	408	537	697	836
Scotts Bluff	446	447	537	684	903
Sherman	448	449	539	666	777
Stanton	446	447	537	673	695
Thomas	405	468	537	709	731
Valley	448	449	539	666	777
Webster	378	442	582	744	864
York	378	447	585	710	853

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Carson City, NV MSA	611	736	887	1292	1558	Carson
Las Vegas-Paradise, NV MSA	770	907	1067	1483	1785	Clark
Reno-Sparks, NV MSA	592	708	875	1271	1537	Storey, Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	659	661	830	1050	1233
Elko	594	646	838	1044	1344
Eureka	517	597	762	1012	1119
Lander	517	597	762	1012	1119
Lyon	546	614	808	1177	1213
Nye	462	642	713	1039	1070
White Pine	517	597	762	1012	1119
Douglas	690	849	1031	1435	1591
Esmeralda	517	597	762	1012	1119
Humboldt	521	611	802	960	988
Lincoln	517	597	762	1012	1119
Mineral	517	597	762	1012	1119
Pershing	517	597	762	1012	1119

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston-Cambridge-Quincy, MA-NH HMFA	1055	1120	1314	1572	1727	Rockingham County towns of Seabrook town, South Hampton town
Hillsborough County, NH (part) HMFA	718	729	957	1394	1680	Hillsborough County towns of Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Lawrence, MA-NH HMFA	760	967	1169	1396	1439	Rockingham County towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Manchester, NH HMFA	691	849	1015	1213	1249	Hillsborough County towns of Bedford town, Goffstown town, Manchester city, Weare town

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 32

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Nashua, NH HMFA	765	900	1125	1504	1610	Hillsborough County towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Pelham town, Wilton town
Portsmouth-Rochester, NH HMFA	670	792	987	1303	1470	Rockingham County towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford County towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Middleton town, Milton town, New Durham town, Rochester city, Rollinsford town, Somersworth city, Strafford town
Western Rockingham County, NH HMFA	872	873	1050	1388	1431	Rockingham County towns of Auburn town, Candia town, Deerfield town, Londonderry town, Northwood town, Nottingham town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap County, NH	566	697	870	1148	1476	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll County, NH	628	662	874	1189	1460	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire County, NH	695	742	930	1122	1365	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos County, NH	408	533	626	878	986	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township,

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 33

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Thompson and Meserves purchase, Wentworth location, Whitefield town
Grafton County, NH	617	679	861	1158	1221	Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, Warren town, Waterville Valley town, Wentworth town, Woodstock town
Merrimack County, NH	619	732	956	1181	1513	Allenstown town, Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hooksett town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Sullivan County, NH	524	635	809	1096	1184	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic City-Hammonton, NJ MSA	837	922	1100	1395	1564	Atlantic
*Bergen-Passaic, NJ HMFA	1195	1307	1494	1884	2281	Bergen, Passaic
Jersey City, NJ HMFA	976	1031	1203	1458	1570	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA	1188	1232	1449	1818	2145	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ HMFA	937	1082	1321	1721	1868	Monmouth, Ocean
Newark, NJ HMFA	883	1079	1233	1476	1632	Essex, Morris, Sussex, Union
Ocean City, NJ MSA	739	754	949	1243	1280	Cape May
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	789	900	1077	1317	1589	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA	885	1018	1224	1463	1641	Mercer
Vineland-Millville-Bridgeton, NJ MSA	799	802	1010	1227	1293	Cumberland
Warren County, NJ HMFA	766	858	1003	1201	1236	Warren

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Albuquerque, NM MSA	546	642	811	1181	1416	Bernalillo, Sandoval, Torrance, Valencia
Farmington, NM MSA	499	528	636	841	948	San Juan
Las Cruces, NM MSA	483	520	580	800	889	Dona Ana

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 34

NEW MEXICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Fe, NM MSA	646	801	974	1275	1524	Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	391	440	527	768	791	Chaves	421	423	540	706	728
Cibola	439	473	527	766	832	Colfax	466	498	560	707	735
Curry	438	454	527	714	928	De Baca	438	451	527	711	865
Eddy	352	448	527	707	859	Grant	423	490	557	785	807
Guadalupe	516	523	623	782	816	Harding	438	451	527	711	865
Hidalgo	391	440	527	768	791	Lea	436	475	527	693	730
Lincoln	412	519	632	796	1110	Los Alamos	656	764	1003	1204	1240
Luna	437	475	527	672	807	McKinley	416	489	643	768	995
Mora	516	523	623	782	816	Otero	403	476	527	770	928
Quay	438	451	527	711	865	Rio Arriba	471	480	567	734	814
Roosevelt	437	448	527	730	903	San Miguel	441	475	585	777	903
Sierra	341	425	527	770	926	Socorro	438	440	527	631	894
Taos	627	681	754	903	930	Union	438	451	527	711	865

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	705	731	892	1068	1167	Albany, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	596	599	716	934	1096	Broome, Tioga
Buffalo-Niagara Falls, NY MSA	617	619	743	919	1015	Erie, Niagara
Elmira, NY MSA	653	655	786	1010	1052	Chemung
Glens Falls, NY MSA	620	656	825	1041	1172	Warren, Washington
Ithaca, NY MSA	789	811	950	1150	1192	Tompkins
Kingston, NY MSA	764	828	992	1257	1561	Ulster
Nassau-Suffolk, NY HMFA	1144	1322	1561	2071	2257	Nassau, Suffolk
New York, NY HMFA	1166	1261	1403	1726	1941	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA	766	900	1102	1351	1439	Dutchess, Orange
Rochester, NY MSA	595	658	804	966	1023	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	636	637	768	983	1064	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	617	618	744	912	1036	Herkimer, Oneida
Westchester County, NY Statutory Exception Area	1125	1342	1561	1883	2321	Westchester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	568	571	684	852	1047	Cattaraugus	577	578	696	915	1050
Cayuga	619	620	744	990	1149	Chautauqua	584	587	704	908	992
Chenango	581	585	701	883	1231	Clinton	656	659	790	1003	1304
Columbia	716	731	862	1041	1110	Cortland	625	627	765	972	1193
Delaware	588	591	709	876	1154	Essex	618	620	744	990	1076
Franklin	566	567	678	871	963	Fulton	485	592	748	895	951
Genesee	676	677	814	1009	1142	Greene	619	668	814	1058	1153
Hamilton	623	625	750	935	1083	Jefferson	644	646	776	1000	1051

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 35

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lewis	575	578	693	867	967
Otsego	609	624	733	974	1013
Schuyler	627	630	755	1006	1040
Steuben	612	613	737	946	1044
Wyoming	594	610	716	1042	1138

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Montgomery	575	617	693	877	949
St. Lawrence	575	577	694	879	960
Seneca	664	666	798	1050	1329
Sullivan	632	700	899	1076	1260
Yates	611	619	735	952	980

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anson County, NC HMFA	493	529	592	832	879	Anson
Asheville, NC HMFA	504	589	672	900	1180	Buncombe, Henderson, Madison
Burlington, NC MSA	627	649	756	1027	1058	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC HMFA	681	738	819	1032	1201	Cabarrus, Gaston, Mecklenburg, Union
Durham-Chapel Hill, NC HMFA	525	719	806	1053	1136	Chatham, Durham, Orange
Fayetteville, NC HMFA	571	618	690	980	1159	Cumberland
Goldsboro, NC MSA	441	524	613	767	1026	Wayne
Greene County, NC HMFA	492	493	592	836	864	Greene
Greensboro-High Point, NC HMFA	535	611	681	863	923	Guilford, Randolph
Greenville, NC HMFA	509	528	651	902	932	Pitt
Haywood County, NC HMFA	515	516	644	834	1079	Haywood
Hickory-Lenoir-Morganton, NC MSA	517	543	624	801	932	Alexander, Burke, Caldwell, Catawba
Hoke County, NC HMFA	529	575	637	872	1063	Hoke
Jacksonville, NC MSA	523	560	629	883	1037	Onslow
Pender County, NC HMFA	523	526	632	831	854	Pender
Person County, NC HMFA	512	513	619	739	847	Person
Raleigh-Cary, NC MSA	695	779	867	1090	1129	Franklin, Johnston, Wake
Rockingham County, NC HMFA	475	502	595	739	762	Rockingham
Rocky Mount, NC MSA	385	465	592	735	757	Edgecombe, Nash
Virginia Beach-Norfolk-Newport News, VA-NC MSA	800	834	965	1319	1590	Currituck
Wilmington, NC HMFA	602	664	802	1124	1156	Brunswick, New Hanover
Winston-Salem, NC MSA	491	559	648	883	1038	Davie, Forsyth, Stokes, Yadkin

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	440	517	592	777	800
Avery	451	558	659	788	931
Bertie	406	514	592	709	731
Camden	434	566	668	902	925
Caswell	491	492	602	736	768
Chowan	434	566	668	902	925
Cleveland	576	577	694	914	1026
Craven	491	560	642	865	1081
Davidson	504	505	609	794	907
Gates	434	566	668	902	925
Granville	540	542	651	812	966
Harnett	500	543	602	813	1057

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashe	490	492	592	783	925
Beaufort	385	503	592	713	733
Bladen	385	467	592	863	932
Carteret	536	537	645	939	1131
Cherokee	385	498	592	860	1037
Clay	491	494	592	777	905
Columbus	414	533	592	709	730
Dare	664	665	816	1079	1110
Duplin	491	532	592	749	772
Graham	491	494	592	777	905
Halifax	385	535	592	753	864
Hertford	385	531	592	777	799

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 36

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hyde	434	566	668	902	925	Iredell	590	595	712	943	1231
Jackson	508	526	626	822	848	Jones	495	535	640	886	1126
Lee	429	587	662	814	1162	Lenoir	448	451	592	707	1016
Lincoln	409	565	629	760	781	McDowell	422	503	650	803	826
Macon	445	483	623	757	1093	Martin	492	522	592	767	789
Mitchell	451	558	659	788	931	Montgomery	491	533	592	738	1040
Moore	539	540	680	978	1193	Northampton	387	522	592	753	774
Pamlico	396	503	592	745	767	Pasquotank	430	555	660	958	987
Perquimans	434	566	668	902	925	Polk	544	545	669	836	862
Richmond	426	533	592	744	767	Robeson	422	510	592	710	791
Rowan	557	604	670	956	1021	Rutherford	531	533	652	780	804
Sampson	492	502	592	822	1042	Scotland	485	486	616	748	933
Stanly	456	492	602	820	892	Surry	442	532	592	791	813
Swain	491	494	592	777	905	Transylvania	495	688	762	962	1014
Tyrrell	434	566	668	902	925	Vance	491	492	592	709	731
Warren	498	500	599	732	753	Washington	409	552	629	755	775
Watauga	488	595	749	911	1176	Wilkes	433	496	592	760	791
Wilson	553	554	672	804	853	Yancey	490	492	592	707	728

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	455	477	593	859	883	Burleigh, Morton
Fargo, ND-MN MSA	405	481	612	883	1021	Cass
Grand Forks, ND-MN MSA	417	523	642	813	1106	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	382	444	545	722	754	Barnes	452	455	545	762	958
Benson	446	448	545	752	948	Billings	382	444	545	722	754
Bottineau	414	454	565	796	867	Bowman	382	444	545	722	754
Burke	414	454	565	796	867	Cavalier	446	448	545	752	948
Dickey	446	448	545	752	948	Divide	382	444	545	722	754
Dunn	382	444	545	722	754	Eddy	446	448	545	752	948
Emmons	414	454	565	796	867	Foster	446	448	545	752	948
Golden Valley	382	444	545	722	754	Grant	382	444	545	722	754
Griggs	446	448	545	752	948	Hettinger	382	444	545	722	754
Kidder	414	454	565	796	867	LaMoure	446	448	545	752	948
Logan	414	454	565	796	867	McHenry	414	454	565	796	867
McIntosh	414	454	565	796	867	McKenzie	382	444	545	722	754
McLean	414	454	565	796	867	Mercer	382	444	545	722	754
Mountrail	414	454	565	796	867	Nelson	421	523	624	844	937
Oliver	382	444	545	722	754	Pembina	421	523	624	844	937

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 37

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pierce	414	454	565	796	867
Ransom	446	448	545	752	948
Richland	368	442	560	727	863
Sargent	446	448	545	752	948
Sioux	382	444	545	722	754
Stark	387	471	545	793	958
Stutsman	453	455	545	755	958
Traill	421	523	624	844	937
Ward	422	525	646	892	1059
Williams	355	433	545	718	761

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ramsey	403	414	545	679	859
Renville	414	454	565	796	867
Rolette	414	454	565	796	867
Sheridan	414	454	565	796	867
Slope	382	444	545	722	754
Steele	421	523	624	844	937
Towner	446	448	545	752	948
Walsh	421	523	624	844	937
Wells	446	448	545	752	948

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH MSA	498	582	745	948	977	Portage, Summit
Brown County, OH HMFA	447	468	618	797	961	Brown
Canton-Massillon, OH MSA	448	497	628	793	840	Carroll, Stark
Cincinnati-Middleton, OH-KY-IN HMFA	488	578	749	1003	1041	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH MSA	514	597	719	922	979	Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH HMFA	529	615	778	979	1064	Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway
Dayton, OH HMFA	505	577	710	956	1140	Greene, Miami, Montgomery
Huntington-Ashland, WV-KY-OH MSA	417	493	592	730	754	Lawrence
Lima, OH MSA	486	492	609	751	771	Allen
Mansfield, OH MSA	399	487	614	797	829	Richland
Parkersburg-Marietta-Vienna, WV-OH MSA	432	462	592	786	848	Washington
Preble County, OH HMFA	529	545	662	857	888	Preble
Sandusky, OH MSA	438	528	674	880	925	Erie
Springfield, OH MSA	489	544	655	847	1088	Clark
Steubenville-Weirton, OH-WV MSA	392	480	592	739	803	Jefferson
Toledo, OH MSA	470	523	647	835	910	Fulton, Lucas, Ottawa, Wood
Union County, OH HMFA	655	656	788	943	972	Union
Wheeling, WV-OH MSA	385	464	592	744	868	Belmont
Youngstown-Warren-Boardman, OH HMFA	436	490	592	745	804	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	481	500	592	784	828
Ashtabula	429	504	642	816	951
Auglaize	435	467	612	796	817
Clinton	460	568	630	918	1078
Coshocton	412	497	592	765	873
Darke	384	491	592	788	811
Fayette	476	547	668	804	1073
Guernsey	416	514	592	782	804
Hardin	491	534	592	742	972
Henry	405	496	601	773	797

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	419	499	647	835	859
Athens	492	535	593	763	793
Champaign	413	505	637	785	845
Columbiana	474	500	604	747	908
Crawford	489	496	592	762	835
Defiance	448	513	623	786	957
Gallia	402	534	592	753	989
Hancock	444	519	673	915	972
Harrison	395	471	592	758	780
Highland	491	493	592	797	823

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 38

OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hocking	384	534	592	845	869	Holmes	492	493	592	781	828
Huron	435	526	643	892	982	Jackson	501	504	603	723	745
Knox	523	526	632	809	927	Logan	540	546	649	816	843
Marion	429	541	661	838	1020	Meigs	492	533	592	811	835
Mercer	387	501	592	797	822	Monroe	492	493	592	727	813
Morgan	492	493	592	727	813	Muskingum	480	492	592	758	956
Noble	492	493	592	727	813	Paulding	435	476	592	773	796
Perry	491	493	592	741	762	Pike	385	496	593	710	739
Putnam	416	460	606	752	784	Ross	448	507	592	732	840
Sandusky	527	539	634	788	861	Scioto	474	496	592	777	929
Seneca	438	459	593	745	767	Shelby	493	504	656	819	907
Tuscarawas	397	464	612	775	798	Van Wert	385	461	592	720	744
Vinton	432	533	592	810	1009	Wayne	441	549	676	808	884
Williams	491	497	617	817	903	Wyandot	492	493	592	812	836

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR-OK HMFA	402	457	569	758	826	Sequoyah
Grady County, OK HMFA	410	457	569	770	884	Grady
Lawton, OK MSA	461	497	625	913	1098	Comanche
Le Flore County, OK HMFA	385	448	569	704	862	Le Flore
Lincoln County, OK HMFA	471	472	569	749	773	Lincoln
Oklahoma City, OK HMFA	529	577	701	946	1014	Canadian, Cleveland, Logan, McClain, Oklahoma
Okmulgee County, OK HMFA	384	432	569	772	820	Okmulgee
Pawnee County, OK HMFA	475	489	569	737	759	Pawnee
Tulsa, OK HMFA	518	563	688	909	938	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	475	476	569	679	699	Alfalfa	474	490	569	773	797
Atoka	412	461	569	740	863	Beaver	474	490	569	773	797
Beckham	473	512	569	744	998	Blaine	474	490	569	773	797
Bryan	462	464	569	736	876	Caddo	391	433	569	681	851
Carter	502	535	605	753	806	Cherokee	459	494	572	718	826
Choctaw	471	510	569	807	831	Cimarron	474	490	569	773	797
Coal	412	461	569	740	863	Cotton	432	467	589	852	998
Craig	384	448	590	707	1037	Custer	439	440	569	814	838
Delaware	409	460	569	764	788	Dewey	474	490	569	773	797
Ellis	474	490	569	773	797	Garfield	468	493	592	820	844
Garvin	368	430	569	748	912	Grant	474	490	569	773	797
Greer	441	457	569	765	801	Harmon	441	457	569	765	801
Harper	474	490	569	773	797	Haskell	370	444	569	716	785
Hughes	460	524	625	796	819	Jackson	391	508	570	800	824
Jefferson	432	467	589	852	998	Johnston	412	461	569	740	863

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 39

OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kay	386	478	594	820	848
Kiowa	441	457	569	765	801
Love	412	461	569	740	863
McIntosh	421	477	570	713	809
Marshall	412	461	569	740	863
Murray	474	475	569	765	979
Noble	415	482	580	806	831
Okfuskee	460	524	625	796	819
Payne	503	576	706	1000	1029
Pontotoc	400	447	569	776	800
Pushmataha	370	444	569	716	785
Seminole	369	456	569	683	704
Texas	442	530	597	755	903
Washington	469	470	573	802	883
Woods	422	452	569	827	853

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kingfisher	474	490	569	799	822
Latimer	370	444	569	716	785
McCurtain	369	431	569	739	762
Major	474	490	569	773	797
Mayes	369	513	569	712	814
Muskogee	430	507	601	760	840
Nowata	434	459	569	758	856
Ottawa	475	476	569	776	800
Pittsburg	388	453	597	752	916
Pottawatomie	494	562	625	792	919
Roger Mills	441	457	569	765	801
Stephens	373	432	569	777	802
Tillman	432	467	589	852	998
Washita	441	457	569	765	801
Woodward	395	461	569	710	731

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bend, OR MSA	572	664	792	1154	1190	Deschutes
Corvallis, OR MSA	537	651	811	1178	1355	Benton
Eugene-Springfield, OR MSA	527	639	809	1132	1260	Lane
Medford, OR MSA	529	629	790	1149	1183	Jackson
Portland-Vancouver-Hillsboro, OR-WA MSA	675	783	905	1318	1583	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA	500	555	664	965	1164	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	419	488	644	937	965
Coos	458	555	704	934	1076
Curry	517	595	702	1026	1238
Gilliam	485	568	686	930	1087
Harney	434	505	635	878	933
Jefferson	538	573	649	944	1062
Klamath	432	506	645	902	1002
Lincoln	538	614	783	1085	1225
Malheur	459	524	638	923	949
Sherman	485	568	686	930	1087
Umatilla	450	513	656	921	1027
Wallowa	426	496	655	937	1007
Wheeler	485	568	686	930	1087

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clatsop	474	589	728	1053	1086
Crook	451	580	694	939	1099
Douglas	447	532	687	932	1153
Grant	485	568	686	930	1087
Hood River	487	602	750	1067	1101
Josephine	521	597	722	1027	1139
Lake	434	505	635	878	933
Linn	514	623	777	1071	1326
Morrow	485	568	686	930	1087
Tillamook	498	595	765	1069	1102
Union	430	501	661	964	992
Wasco	499	559	696	989	1224

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 40

PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA HMFA	575	700	828	1071	1134	Carbon, Lehigh, Northampton
Altoona, PA MSA	471	516	624	817	844	Blair
Armstrong County, PA HMFA	488	531	587	751	986	Armstrong
Erie, PA MSA	465	525	678	811	922	Erie
Harrisburg-Carlisle, PA MSA	549	627	790	997	1033	Cumberland, Dauphin, Perry
Johnstown, PA MSA	470	478	587	739	846	Cambria
Lancaster, PA MSA	511	607	747	948	996	Lancaster
Lebanon, PA MSA	450	537	692	939	968	Lebanon
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	789	900	1077	1317	1589	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pike County, PA HMFA	837	871	1009	1366	1673	Pike
Pittsburgh, PA HMFA	533	585	700	870	939	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	557	622	767	1025	1058	Berks
Scranton--Wilkes-Barre, PA MSA	462	551	662	839	886	Lackawanna, Luzerne, Wyoming
Sharon, PA HMFA	460	481	587	719	790	Mercer
State College, PA MSA	645	719	847	1012	1044	Centre
Williamsport, PA MSA	456	524	631	829	852	Lycoming
York-Hanover, PA MSA	487	559	710	858	889	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	551	602	720	969	1075	Bedford	447	508	587	701	932
Bradford	382	512	587	734	899	Cameron	491	509	589	781	840
Clarion	488	530	587	749	783	Clearfield	447	494	587	842	993
Clinton	530	531	640	766	787	Columbia	473	519	632	808	958
Crawford	467	518	587	779	890	Elk	489	511	587	761	920
Forest	489	519	587	761	782	Franklin	457	519	655	862	1057
Fulton	392	499	587	724	846	Greene	487	519	587	701	722
Huntingdon	382	473	587	758	781	Indiana	523	544	629	751	821
Jefferson	399	494	587	777	801	Juniata	452	489	589	800	826
Lawrence	426	557	655	783	920	McKean	492	518	591	792	852
Mifflin	413	478	587	762	954	Monroe	600	740	925	1181	1322
Montour	525	602	693	829	855	Northumberland	403	526	587	727	753
Potter	488	529	587	778	800	Schuylkill	391	510	587	733	806
Snyder	408	536	630	788	851	Somerset	488	488	587	721	763
Sullivan	387	519	595	746	888	Susquehanna	477	519	608	731	806
Tioga	503	552	614	807	862	Union	563	587	678	891	959
Venango	451	492	587	741	841	Warren	382	490	587	762	807
Wayne	570	573	720	899	1014						

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Newport-Middleton-Portsmouth, RI HMFA	819	1000	1236	1678	2169	Newport County towns of Middletown town, Newport city, Portsmouth town
Providence-Fall River, RI-MA HMFA	766	852	982	1173	1447	Bristol County towns of Barrington town, Bristol town, Warren town

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 41

RHODE ISLAND continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kent County towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport County towns of Jamestown town, Little Compton town, Tiverton town Providence County towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington County towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town
Westerly-Hopkinton-New Shoreham, RI HMFA.....	695	874	1022	1221	1594	Washington County towns of Hopkinton town, New Shoreham town, Westerly town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, SC MSA.....	418	542	616	780	802	Anderson
Augusta-Richmond County, GA-SC MSA.....	516	560	629	842	886	Aiken, Edgefield
Charleston-North Charleston-Summerville, SC MSA...	667	739	836	1089	1268	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC HMFA.....	681	738	819	1032	1201	York
Columbia, SC HMFA.....	612	666	743	918	947	Calhoun, Fairfield, Lexington, Richland, Saluda
Darlington County, SC HMFA.....	360	462	555	667	718	Darlington
Florence, SC HMFA.....	432	486	562	674	846	Florence
Greenville-Mauldin-Easley, SC MSA.....	529	574	639	843	867	Greenville, Pickens
Kershaw County, SC HMFA.....	406	511	628	789	916	Kershaw
Laurens County, SC HMFA.....	494	536	594	751	876	Laurens
Myrtle Beach-North Myrtle Beach-Conway, SC MSA....	617	678	792	946	1147	Horry
Spartanburg, SC MSA.....	535	553	646	813	837	Spartanburg
Sumter, SC MSA.....	479	520	576	740	783	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville.....	360	500	555	674	694	Allendale.....	462	500	555	689	891
Bamberg.....	461	462	555	740	762	Barnwell.....	460	483	555	668	864
Beaufort.....	653	786	889	1084	1151	Cherokee.....	455	456	556	666	706
Chester.....	477	478	573	685	728	Chesterfield.....	392	489	555	663	974
Clarendon.....	484	485	582	697	794	Colleton.....	360	449	555	785	806
Dillon.....	461	469	555	694	762	Georgetown.....	543	544	656	850	1026
Greenwood.....	488	511	587	852	878	Hampton.....	461	470	555	684	776
Jasper.....	509	553	616	735	833	Lancaster.....	376	474	555	763	840
Lee.....	379	465	555	683	855	McCormick.....	467	490	562	777	803
Marion.....	458	460	555	674	692	Marlboro.....	461	462	555	700	830
Newberry.....	459	500	555	705	869	Oconee.....	365	427	561	696	987
Orangeburg.....	461	500	555	689	854	Union.....	461	462	555	766	861

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

SOUTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Williamsburg	484	485	582	697	794

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Meade County, SD HMFA	367	439	568	826	922	Meade
Rapid City, SD HMFA	518	603	760	1006	1034	Pennington
Sioux City, IA-NE-SD MSA	439	515	676	851	876	Union
Sioux Falls, SD MSA	527	554	708	925	1023	Lincoln, McCook, Minnehaha, Turner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	364	423	557	714	762	Beadle	463	465	557	810	919
Bennett	420	437	557	745	829	Bon Homme	364	423	557	714	762
Brookings	362	454	559	789	982	Brown	407	436	575	730	867
Brule	364	423	557	714	762	Buffalo	364	423	557	714	762
Butte	420	437	557	745	829	Campbell	405	424	557	735	874
Charles Mix	364	423	557	714	762	Clark	373	433	557	753	888
Clay	424	451	593	818	1041	Codington	411	480	631	815	931
Corson	420	437	557	745	829	Custer	420	437	557	745	829
Davison	383	450	590	757	814	Day	405	424	557	735	874
Deuel	373	433	557	753	888	Dewey	420	437	557	745	829
Douglas	364	423	557	714	762	Edmunds	405	424	557	735	874
Fall River	412	430	565	733	815	Faulk	405	424	557	735	874
Grant	373	433	557	753	888	Gregory	364	423	557	714	762
Haakon	420	437	557	745	829	Hamlin	373	433	557	753	888
Hand	405	424	557	735	874	Hanson	364	423	557	714	762
Harding	420	437	557	745	829	Hughes	371	465	574	720	743
Hutchinson	364	423	557	714	762	Hyde	364	423	557	714	762
Jackson	420	437	557	745	829	Jerauld	405	424	557	735	874
Jones	420	437	557	745	829	Kingsbury	373	433	557	753	888
Lake	373	433	557	753	888	Lawrence	393	477	588	819	874
Lyman	364	423	557	714	762	McPherson	405	424	557	735	874
Marshall	405	424	557	735	874	Mellette	420	437	557	745	829
Miner	373	433	557	753	888	Moody	373	433	557	753	888
Perkins	420	437	557	745	829	Potter	420	437	557	745	829
Roberts	405	424	557	735	874	Sanborn	364	423	557	714	762
Shannon	420	437	557	745	829	Spink	405	424	557	735	874
Stanley	364	423	557	714	762	Sully	364	423	557	714	762
Todd	420	437	557	745	829	Tripp	364	423	557	714	762
Walworth	405	424	557	735	874	Yankton	391	464	602	789	811
Ziebach	420	437	557	745	829						

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 43

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	584	617	727	895	1052	Hamilton, Marion, Sequatchie
Clarksville, TN-KY HMFA	548	570	662	957	985	Montgomery
Cleveland, TN MSA	472	482	621	779	990	Bradley, Polk
Hickman County, TN HMFA	366	509	564	822	848	Hickman
Jackson, TN MSA	508	554	700	937	963	Chester, Madison
Johnson City, TN MSA	393	475	589	732	912	Carter, Unicoi, Washington
Kingsport-Bristol-Bristol, TN-VA MSA	440	473	588	788	942	Hawkins, Sullivan
Knoxville, TN MSA	512	588	709	950	981	Anderson, Blount, Knox, Loudon, Union
Macon County, TN HMFA	353	430	543	647	718	Macon
Memphis, TN-MS-AR HMFA	628	682	758	1010	1041	Fayette, Shelby, Tipton
Morristown, TN MSA	461	463	556	729	822	Grainger, Hamblen, Jefferson
Nashville-Davidson--Murfreesboro--Franklin, TN MSA	596	680	782	1014	1044	Cannon, Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, Wilson
Smith County, TN HMFA	470	471	564	752	777	Smith
Stewart County, TN HMFA	360	469	554	756	779	Stewart

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	442	541	680	851	877	Benton	426	427	540	667	733
Bledsoe	353	443	540	709	731	Campbell	448	450	540	696	828
Carroll	447	448	540	666	744	Claiborne	351	448	540	723	810
Clay	437	438	540	701	721	Cocke	352	435	540	647	881
Coffee	484	485	582	789	862	Crockett	449	487	540	704	727
Cumberland	447	448	540	766	947	Decatur	404	444	540	694	790
DeKalb	448	450	540	779	805	Dyer	365	429	562	749	818
Fentress	437	438	540	701	721	Franklin	371	445	572	832	1002
Gibson	442	453	540	678	750	Giles	381	448	591	711	732
Greene	350	442	540	732	752	Grundy	353	443	540	709	731
Hancock	448	449	540	691	832	Hardeman	390	484	540	731	948
Hardin	395	441	540	716	738	Haywood	454	470	615	735	807
Henderson	378	501	585	697	719	Henry	353	413	544	651	792
Houston	426	427	540	667	733	Humphreys	449	486	540	770	795
Jackson	437	438	540	701	721	Johnson	350	435	540	724	759
Lake	401	449	540	701	743	Lauderdale	474	475	572	695	718
Lawrence	372	417	540	668	762	Lewis	362	421	543	692	712
Lincoln	448	449	540	660	679	McMinn	476	478	574	687	915
McNairy	351	413	540	780	803	Marshall	437	464	608	731	917
Maury	466	581	717	913	940	Meigs	353	443	540	709	731
Monroe	427	428	543	649	829	Moore	475	476	569	751	775
Morgan	446	447	540	676	787	Obion	370	447	540	712	751
Overton	352	443	540	660	679	Perry	362	421	543	692	712
Pickett	437	438	540	701	721	Putnam	450	451	562	809	868
Rhea	350	432	540	717	738	Roane	475	490	569	761	781
Scott	448	457	540	715	951	Sevier	541	586	661	795	1161
Van Buren	437	438	540	701	721	Warren	438	443	570	764	909

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	362	421	543	692	712
White	404	411	540	764	784
Weakley	392	482	540	790	952

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	490	515	650	846	1071	Callahan, Jones, Taylor
Amarillo, TX MSA	500	541	676	932	1044	Armstrong, Carson, Potter, Randall
Aransas County, TX HMFA	447	554	660	962	991	Aransas
Atascosa County, TX HMFA	400	466	615	777	800	Atascosa
Austin County, TX HMFA	595	597	718	953	983	Austin
Austin-Round Rock-San Marcos, TX MSA	694	791	963	1296	1476	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	519	583	697	864	896	Hardin, Jefferson, Orange
Brazoria County, TX HMFA	585	652	749	1033	1109	Brazoria
Brownsville-Harlingen, TX MSA	457	528	605	748	845	Cameron
Calhoun County, TX HMFA	423	501	642	809	1083	Calhoun
College Station-Bryan, TX MSA	610	690	843	1068	1101	Brazos, Burleson, Robertson
Corpus Christi, TX HMFA	645	663	823	1130	1231	Nueces, San Patricio
***Dallas, TX HMFA	671	743	897	1168	1381	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	464	497	592	849	1007	El Paso
Fort Worth-Arlington, TX HMFA	671	713	868	1160	1285	Johnson, Parker, Tarrant
*Houston-Baytown-Sugar Land, TX HMFA	682	758	920	1226	1542	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
Kendall County, TX HMFA	749	750	902	1313	1584	Kendall
Killeen-Temple-Fort Hood, TX HMFA	533	589	749	1090	1313	Bell, Coryell
Lampasas County, TX HMFA	385	490	592	864	1012	Lampasas
Laredo, TX MSA	514	563	674	881	1154	Webb
Longview, TX HMFA	546	574	659	902	928	Gregg, Upshur
Lubbock, TX MSA	473	577	728	1031	1064	Crosby, Lubbock
McAllen-Edinburg-Mission, TX MSA	509	560	660	791	909	Hidalgo
Medina County, TX HMFA	545	605	712	852	1036	Medina
Midland, TX MSA	588	637	838	1221	1446	Midland
Odessa, TX MSA	534	566	742	1069	1242	Ector
Rusk County, TX HMFA	509	510	612	733	754	Rusk
San Angelo, TX MSA	464	535	682	975	1066	Irion, Tom Green
San Antonio-New Braunfels, TX HMFA	605	673	831	1072	1302	Bandera, Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	602	634	745	979	1132	Grayson
Texarkana, TX-Texarkana, AR MSA	507	512	630	769	836	Bowie
Tyler, TX MSA	546	641	722	989	1081	Smith
Victoria, TX HMFA	490	564	722	899	1064	Goliad, Victoria
Waco, TX MSA	596	597	742	929	959	McLennan
Wichita Falls, TX MSA	538	565	673	945	972	Archer, Clay, Wichita
Wise County, TX HMFA	555	557	669	817	909	Wise

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	531	556	641	844	1106
Angelina	508	578	647	837	864
Baylor	401	476	592	754	895
Andrews	491	504	592	793	885
Bailey	456	509	592	770	976
Bee	495	496	595	799	895

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Blanco	473	508	642	843	966
Bosque	491	493	592	719	862
Briscoe	482	485	592	789	813
Brown	474	515	649	825	947
Camp	498	499	613	837	863
Castro	482	485	592	789	813
Childress	482	485	592	789	813
Coke	465	535	681	980	1068
Collingsworth	482	485	592	789	813
Comanche	482	517	612	779	850
Cooke	548	550	693	855	881
Crane	491	520	592	768	912
Culberson	491	520	592	768	912
Dawson	489	490	592	764	789
DeWitt	438	454	592	773	836
Dimmit	485	487	592	806	955
Duval	408	513	592	789	839
Edwards	485	487	592	806	955
Falls	392	535	602	768	797
Fayette	491	558	675	838	863
Floyd	456	509	592	770	976
Franklin	446	513	619	758	912
Frio	478	587	714	904	1075
Garza	456	509	592	770	976
Glasscock	489	490	592	764	789
Gray	458	459	592	743	767
Hale	398	503	592	725	810
Hamilton	473	508	642	843	966
Hardeman	401	476	592	754	895
Hartley	482	485	592	789	813
Hemphill	482	485	592	789	813
Hill	385	534	592	838	915
Hood	593	643	715	945	1254
Houston	573	615	690	826	894
Hudspeth	491	520	592	768	912
Jack	401	476	592	754	895
Jasper	492	493	592	732	847
Jim Hogg	491	528	592	846	942
Karnes	439	452	592	775	838
Kent	457	458	592	847	919
Kimble	489	490	592	764	789
Kinney	485	487	592	806	955

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Borden	489	490	592	764	789
Brewster	431	450	592	708	767
Brooks	491	528	592	846	942
Burnet	484	567	745	937	964
Cass	386	533	592	813	957
Cherokee	481	527	592	792	823
Cochran	456	509	592	770	976
Coleman	473	508	642	843	966
Colorado	473	522	592	782	804
Concho	489	490	592	764	789
Cottle	401	476	592	754	895
Crockett	489	490	592	764	789
Dallam	444	487	642	767	787
Deaf Smith	385	491	592	860	980
Dickens	456	509	592	770	976
Donley	482	485	592	789	813
Eastland	482	517	612	779	850
Erath	480	521	650	793	817
Fannin	516	520	620	773	796
Fisher	457	458	592	847	919
Foard	401	476	592	754	895
Freestone	392	535	602	787	811
Gaines	491	524	592	768	920
Gillespie	503	588	773	1071	1102
Gonzales	406	463	592	861	886
Grimes	528	579	645	840	865
Hall	482	485	592	789	813
Hansford	482	485	592	789	813
Harrison	477	480	632	817	841
Haskell	457	458	592	847	919
Henderson	484	501	659	864	891
Hockley	461	490	592	822	847
Hopkins	444	513	626	794	1099
Howard	491	495	592	831	854
Hutchinson	498	499	598	716	890
Jackson	385	498	592	722	1041
Jeff Davis	491	520	592	768	912
Jim Wells	396	532	592	787	812
Kenedy	491	528	592	846	942
Kerr	598	647	728	939	968
King	456	509	592	770	976
Kleberg	509	545	612	894	1077

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	401	476	592	754	895
Lamb	456	509	592	770	976
Lavaca	473	522	592	782	804
Leon	528	579	645	840	865
Lipscomb	482	485	592	789	813
Llano	615	619	814	974	1003
Lynn	456	509	592	770	976
McMullen	408	513	592	789	839
Marion	498	499	613	837	863
Mason	489	490	592	764	789
Maverick	493	494	592	860	887
Milam	385	476	592	766	814
Mitchell	457	458	592	847	919
Moore	418	514	592	862	887
Motley	456	509	592	770	976
Navarro	557	567	685	832	859
Nolan	459	461	592	763	1037
Oldham	482	485	592	789	813
Panola	493	533	592	720	1040
Pecos	488	533	592	718	869
Presidio	491	520	592	768	912
Reagan	489	490	592	764	789
Red River	446	513	619	758	912
Refugio	408	513	592	789	839
Runnels	489	490	592	764	789
San Augustine	490	491	592	770	1037
Schleicher	489	490	592	764	789
Shackelford	457	458	592	847	919
Sherman	482	485	592	789	813
Starr	491	535	592	863	1043
Sterling	489	490	592	764	789
Sutton	489	490	592	764	789
Terrell	491	520	592	768	912
Throckmorton	457	458	592	847	919
Trinity	573	615	690	826	894
Upton	489	490	592	764	789
Val Verde	423	507	598	744	867
Walker	589	629	761	979	1268
Washington	565	642	711	998	1030
Wheeler	482	485	592	789	813
Willacy	491	533	592	861	959
Wood	445	449	592	863	1038

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lamar	447	517	649	818	914
La Salle	485	487	592	806	955
Lee	477	542	602	824	849
Limestone	385	536	592	758	784
Live Oak	408	513	592	789	839
Loving	491	520	592	768	912
McCulloch	491	493	592	862	889
Madison	528	579	645	840	865
Martin	489	490	592	764	789
Matagorda	387	509	595	867	1045
Menard	489	490	592	764	789
Mills	473	508	642	843	966
Montague	450	575	641	809	1124
Morris	446	513	619	758	912
Nacogdoches	482	604	712	850	1165
Newton	490	491	592	770	1037
Ochiltree	482	485	592	827	852
Palo Pinto	504	505	626	865	889
Parmer	482	485	592	789	813
Polk	492	498	592	709	729
Rains	501	503	625	843	868
Real	485	487	592	806	955
Reeves	491	524	592	759	920
Roberts	482	485	592	789	813
Sabine	490	491	592	770	1037
San Saba	473	508	642	843	966
Scurry	391	462	592	861	946
Shelby	491	493	592	851	1037
Somervell	482	517	612	782	850
Stephens	440	450	592	815	886
Stonewall	457	458	592	847	919
Swisher	482	485	592	789	813
Terry	455	507	592	778	974
Titus	466	552	655	787	1150
Tyler	491	493	592	762	987
Uvalde	386	526	592	771	1038
Van Zandt	525	528	645	902	928
Ward	492	498	592	738	876
Wharton	475	533	592	783	807
Wilbarger	384	458	592	760	848
Winkler	491	520	592	768	912
Yoakum	456	509	592	770	976

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 47

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Young	387	451	594	754	877
Zavala	485	487	592	806	955
Zapata	491	528	592	846	942

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Logan, UT-ID MSA	502	542	677	908	1121	Cache
Ogden-Clearfield, UT MSA	518	623	767	1055	1247	Davis, Morgan, Weber
Provo-Orem, UT MSA	556	612	715	1040	1253	Juab, Utah
Salt Lake City, UT HMFA	630	685	826	1162	1353	Salt Lake
St. George, UT MSA	573	600	713	1037	1166	Washington
Summit County, UT HMFA	695	966	1073	1502	1882	Summit
Tooele County, UT HMFA	544	610	725	916	1270	Tooele

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	548	550	672	952	1013
Carbon	491	493	592	778	913
Duchesne	678	737	817	1055	1435
Garfield	548	550	672	952	1013
Iron	503	531	611	890	1074
Millard	548	550	672	952	1013
Rich	511	542	678	911	1106
Sanpete	548	550	672	952	1013
Uintah	584	635	704	924	1040
Wayne	548	550	672	952	1013
Box Elder	426	522	658	870	1012
Daggett	507	551	611	792	1074
Emery	507	551	611	792	1074
Grand	508	553	613	790	1076
Kane	548	550	672	952	1011
Piute	548	550	672	952	1013
San Juan	507	551	611	792	1074
Sevier	548	550	672	952	1013
Wasatch	567	663	873	1043	1253

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington-South Burlington, VT MSA	847	938	1177	1507	1689	Chittenden County towns of Bolton town, Buels gore, Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Huntington town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Underhill town, Westford town, Williston town, Winooski city Franklin County towns of Bakersfield town, Berkshire town, Enosburg town, Fairfax town, Fairfield town, Fletcher town, Franklin town, Georgia town, Highgate town, Montgomery town, Richford town, St. Albans city, St. Albans town, Sheldon town, Swanton town Grand Isle County towns of Alburg town, Grand Isle town, Isle La Motte town, North Hero town, South Hero town

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison County, VT	610	764	919	1208	1612	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburg town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington County, VT	610	764	889	1158	1361	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia County, VT	575	598	750	950	983	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Essex County, VT	594	667	811	1034	1212	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Lamoille County, VT	601	722	841	1172	1477	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange County, VT	641	725	844	1175	1211	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans County, VT	434	599	669	845	1062	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland County, VT	550	720	837	1107	1416	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington County, VT	605	708	886	1197	1340	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham County, VT	716	747	981	1185	1222	Athens town, Brattleboro town, Brookline town, Dover town,

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor County, VT	675	756	889	1210	1439	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Blacksburg-Christiansburg-Radford, VA HMFA	573	627	702	963	1233	Montgomery, Radford city
Charlottesville, VA MSA	654	787	931	1207	1335	Albemarle, Fluvanna, Greene, Nelson, Charlottesville city
Danville, VA MSA	416	478	617	769	826	Pittsylvania, Danville city
Franklin County, VA HMFA	382	457	588	703	749	Franklin
Giles County, VA HMFA	383	496	588	750	1034	Giles
Harrisonburg, VA MSA	528	586	713	999	1026	Rockingham, Harrisonburg city
Kingsport-Bristol-Bristol, TN-VA MSA	440	473	588	788	942	Scott, Washington, Bristol city
Louisa County, VA HMFA	639	725	826	988	1017	Louisa
Lynchburg, VA MSA	528	542	653	805	899	Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city
Pulaski County, VA HMFA	446	472	588	843	906	Pulaski
*Richmond, VA HMFA	791	857	958	1278	1526	Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA HMFA	524	558	721	915	999	Botetourt, Craig, Roanoke, Roanoke city, Salem city
Virginia Beach-Norfolk-Newport News, VA-NC MSA	800	834	965	1319	1590	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Warren County, VA HMFA	587	683	850	1195	1232	Warren
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	1131	1289	1461	1885	2466	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
Winchester, VA-WV MSA	568	590	778	1074	1105	Frederick, Winchester city

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	402	550	619	752	926
Augusta	513	528	689	985	1133
Bland	490	507	588	750	833
Buchanan	490	507	588	750	833
Carroll	489	530	588	705	784
Culpeper	659	671	794	1027	1091
Essex	473	584	719	979	1009
Grayson	490	507	588	750	833
Halifax	382	531	588	790	1033
Highland	504	524	651	898	1085
Lancaster	472	581	708	871	937
Lunenburg	506	523	609	759	1051
Mecklenburg	385	481	593	728	970
Northampton	472	581	708	862	937
Nottoway	489	528	588	835	956
Page	400	467	613	791	815
Prince Edward	571	572	688	824	1102
Richmond	472	581	708	862	937
Russell	383	508	588	720	742
Smyth	486	528	588	747	967
Tazewell	490	491	588	755	854
Wise	489	499	588	765	964
Buena Vista city	470	528	588	856	1031
Covington city	382	490	588	714	745
Franklin city	426	589	653	808	1149
Lexington city	470	528	588	856	1031
Norton city	489	499	588	765	964
Waynesboro city	513	528	689	985	1133

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	382	490	588	714	745
Bath	504	524	651	898	1085
Brunswick	506	523	609	759	1051
Buckingham	489	528	588	756	956
Charlotte	489	528	588	756	956
Dickenson	490	524	588	767	789
Floyd	541	588	652	907	1148
Greensville	507	550	610	737	915
Henry	453	472	588	754	864
King George	666	667	802	1166	1201
Lee	381	460	588	756	800
Madison	519	580	700	969	1000
Middlesex	472	581	708	862	937
Northumberland	472	581	708	862	937
Orange	471	647	721	1049	1265
Patrick	487	531	588	729	750
Rappahannock	519	580	700	969	1000
Rockbridge	470	528	588	856	1031
Shenandoah	484	519	634	846	937
Southampton	426	589	653	808	1149
Westmoreland	478	583	736	1010	1040
Wythe	382	484	588	771	1034
Clifton Forge city	382	490	588	714	745
Emporia city	507	550	610	737	915
Galax city	489	530	588	705	784
Martinsville city	453	472	588	754	864
Staunton city	513	528	689	985	1133

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	612	676	848	1237	1394	Whatcom
Bremerton-Silverdale, WA MSA	667	748	921	1318	1440	Kitsap
Kennewick-Pasco-Richland, WA MSA	539	588	738	998	1182	Benton, Franklin
Lewiston, ID-WA MSA	504	523	655	930	1133	Asotin
Longview, WA MSA	480	603	700	1020	1163	Cowlitz
Mount Vernon-Anacortes, WA MSA	614	760	943	1290	1610	Skagit
Olympia, WA MSA	628	705	901	1308	1582	Thurston
Portland-Vancouver-Hillsboro, OR-WA MSA	675	783	905	1318	1583	Clark, Skamania
Seattle-Bellevue, WA HMFA	857	977	1176	1662	2030	King, Snohomish
Spokane, WA MSA	478	559	737	1012	1148	Spokane
*Tacoma, WA HMFA	682	796	993	1447	1628	Pierce
Wenatchee-East Wenatchee, WA MSA	558	591	747	1008	1160	Chelan, Douglas

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 51

WASHINGTON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Yakima, WA MSA	515	604	782	1030	1086	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	434	518	664	891	919	Clallam	548	607	789	1153	1188
Columbia	448	523	690	932	1112	Ferry	434	514	664	891	919
Garfield	448	523	690	932	1112	Grant	443	526	681	920	945
Grays Harbor	450	527	693	976	1003	Island	805	807	974	1417	1710
Jefferson	561	688	841	1223	1258	Kittitas	502	585	771	1033	1072
Klickitat	581	589	700	983	1012	Lewis	485	620	745	995	1041
Lincoln	434	514	664	891	919	Mason	546	642	770	1052	1246
Okanogan	486	585	688	941	1036	Pacific	476	513	672	953	991
Pend Oreille	434	514	664	891	919	San Juan	686	738	912	1311	1601
Stevens	432	520	664	910	993	Wahkiakum	483	600	701	1021	1171
Walla Walla	448	523	690	992	1023	Whitman	485	534	693	978	1198

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boone County, WV HMFA	342	444	526	651	721	Boone
Charleston, WV HMFA	454	495	619	789	812	Clay, Kanawha, Lincoln, Putnam
Cumberland, MD-WV MSA	425	514	603	813	949	Mineral
Huntington-Ashland, WV-KY-OH MSA	417	493	592	730	754	Cabell, Wayne
Jefferson County, WV HMFA	526	709	808	1180	1420	Jefferson
Martinsburg, WV HMFA	525	592	711	951	1141	Berkeley, Morgan
Morgantown, WV MSA	476	495	586	760	901	Monongalia, Preston
Parkersburg-Marietta-Vienna, WV-OH MSA	432	462	592	786	848	Pleasants, Wirt, Wood
Steubenville-Weirton, OH-WV MSA	392	480	592	739	803	Brooke, Hancock
Wheeling, WV-OH MSA	385	464	592	744	868	Marshall, Ohio
Winchester, VA-WV MSA	568	590	778	1074	1105	Hampshire

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	405	422	526	689	725	Braxton	405	422	526	689	725
Calhoun	383	456	554	720	827	Doddridge	362	462	545	656	776
Fayette	438	439	526	651	700	Gilmer	405	422	526	689	725
Grant	459	530	595	779	967	Greenbrier	418	476	526	632	832
Hardy	459	530	595	779	967	Harrison	451	452	543	680	760
Jackson	383	456	554	720	827	Lewis	414	449	526	660	679
Logan	367	446	526	646	664	McDowell	439	454	526	717	912
Marion	374	479	575	688	838	Mason	437	446	526	666	712
Mercer	437	453	526	711	901	Mingo	342	461	526	663	861
Monroe	437	474	526	655	678	Nicholas	437	474	526	669	732
Pendleton	458	528	596	778	965	Pocahontas	437	454	526	644	764
Raleigh	443	471	531	678	698	Randolph	413	414	534	689	709

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 52

WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ritchie	383	456	554	720	827	Roane	383	456	554	720	827
Summers	437	474	526	655	678	Taylor	362	462	545	653	776
Tucker	405	422	526	689	725	Tyler	383	456	554	720	827
Upshur	342	427	526	706	729	Webster	437	454	526	644	764
Wetzel	343	468	526	670	762	Wyoming	439	454	526	717	912

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton, WI MSA	530	545	676	975	1003	Calumet, Outagamie
Columbia County, WI HMFA	503	588	774	1045	1078	Columbia
Duluth, MN-WI MSA	412	502	633	795	1013	Douglas
Eau Claire, WI MSA	419	500	625	847	882	Chippewa, Eau Claire
Fond du Lac, WI MSA	505	542	652	857	929	Fond du Lac
Green Bay, WI HMFA	529	542	682	959	988	Brown, Kewaunee
Iowa County, WI HMFA	485	566	745	890	916	Iowa
Janesville, WI MSA	497	581	723	946	974	Rock
Kenosha County, WI HMFA	648	675	837	1151	1324	Kenosha
La Crosse, WI-MN MSA	415	486	639	848	1042	La Crosse
Madison, WI HMFA	595	742	877	1177	1458	Dane
*Milwaukee-Waukesha-West Allis, WI MSA	617	736	879	1108	1141	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul-Bloomington, MN-WI MSA	635	748	908	1189	1336	Pierce, St. Croix
Oconto County, WI HMFA	440	533	592	767	799	Oconto
Oshkosh-Neenah, WI MSA	469	552	653	857	1110	Winnebago
Racine, WI MSA	510	596	748	931	1021	Racine
Sheboygan, WI MSA	421	541	639	790	969	Sheboygan
Wausau, WI MSA	418	521	643	858	949	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	445	489	604	786	811	Ashland	457	459	592	752	1019
Barron	394	496	592	755	777	Bayfield	404	472	592	758	786
Buffalo	411	467	597	757	790	Burnett	404	472	592	758	786
Clark	382	452	592	809	834	Crawford	492	526	592	735	905
Dodge	589	590	711	900	972	Door	435	556	669	898	1008
Dunn	450	485	609	888	912	Florence	396	478	592	753	790
Forest	445	489	604	786	811	Grant	491	493	592	767	1039
Green	433	467	613	779	909	Green Lake	445	510	592	775	945
Iron	404	472	592	758	786	Jackson	411	467	597	757	790
Jefferson	507	594	782	937	1181	Juneau	391	481	600	790	814
Lafayette	437	461	592	758	850	Langlade	491	493	592	781	851
Lincoln	493	494	592	862	889	Manitowoc	394	461	607	726	903
Marinette	493	533	592	776	799	Marquette	456	511	622	801	889
Menominee	456	511	622	801	889	Monroe	406	474	625	793	866
Oneida	441	482	632	808	1112	Pepin	411	467	597	757	790

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 53

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Polk	450	526	691	850	877
Price	404	472	592	758	786
Rusk	404	472	592	758	786
Sawyer	404	476	592	758	786
Taylor	404	472	592	758	786
Vernon	470	472	592	748	816
Walworth	522	614	800	998	1030
Waupaca	400	503	611	798	822
Wood	392	482	597	727	796

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Portage	517	524	625	828	851
Richland	416	465	592	759	783
Sauk	447	595	682	917	946
Shawano	407	481	592	739	849
Trempealeau	465	467	592	809	833
Vilas	445	489	604	823	847
Washburn	404	472	592	758	786
Waushara	456	511	622	801	889

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	466	510	645	938	1131	Natrona
Cheyenne, WY MSA	556	586	743	1011	1302	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	506	580	736	1011	1070
Campbell	563	606	679	919	1002
Converse	385	476	592	807	1041
Fremont	496	499	634	794	1012
Hot Springs	502	525	628	820	981
Lincoln	554	586	667	890	1054
Park	470	540	635	798	1051
Sheridan	504	544	668	854	1043
Sweetwater	465	565	709	991	1029
Uinta	482	608	693	947	1123
Weston	502	525	628	820	981

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	502	525	628	820	981
Carbon	392	468	602	754	917
Crook	502	525	628	820	981
Goshen	490	491	592	730	1005
Johnson	503	524	646	820	981
Niobrara	502	525	628	820	981
Platte	502	525	628	820	981
Sublette	558	587	681	891	1056
Teton	863	962	1210	1595	1642
Washakie	502	525	628	820	981

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	781	838	1023	1491	1782

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla-Isabela-San Sebastián, PR MSA	355	386	428	550	616	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
Arecibo, PR HMFA	374	406	451	615	721	Arecibo, Camuy, Hatillo
Barranquitas-Aibonito-Quebradillas, PR HMFA	369	398	443	564	648	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
Caguas, PR HMFA	411	445	495	686	827	Caguas, Cayey, Cidra, Gurabo, San Lorenzo

SCHEDULE B - FY 2011 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 54

PUERTO RICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fajardo, PR MSA	426	464	515	749	903	Ceiba, Fajardo, Luquillo
Guayama, PR MSA	375	405	451	640	793	Arroyo, Guayama, Patillas
Mayagüez, PR MSA	403	437	486	581	802	Hormigueros, Mayagüez
Ponce, PR MSA	435	472	523	726	828	Juana Díaz, Ponce, Villalba
San Germán-Cabo Rojo, PR MSA	351	365	422	552	595	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Guaynabo, PR HMFA	463	502	558	739	874	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerío, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco, PR MSA	347	367	417	525	669	Guánica, Guayanilla, Peñuelas, Yauco

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	346	374	417	571	620	Coamo	346	374	417	571	620
Culebra	346	374	417	571	620	Jayuya	346	374	417	571	620
Las Marías	346	374	417	571	620	Maricao	346	374	417	571	620
Salinas	346	374	417	571	620	Santa Isabel	346	374	417	571	620
Utuado	346	374	417	571	620	Vieques	346	374	417	571	620

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix	571	595	721	901	1030	St. John	649	775	998	1237	1292
St. Thomas	649	775	998	1237	1292						

Note1: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the FMR Area name.
Note3: FMR areas designated by 3 asterisks (***) are part of the Small Area Demonstration Program and will use the FMRs found on Schedule B Addendum for operating the Section 8 voucher program. For all other programs area-wide FMRs should be used. 07/29/2010

Schedule B: Addendum:

Small Area Rents for Dallas, TX HMFA

County	ZIP	0 BR	1 BR	2 BR	3 BR	4 BR
Collin County	**75002**	**850**	**950**	**1,150**	**1,500**	**1,775**
	75009	825	900	1,100	1,425	1,700
	75013	825	900	1,100	1,425	1,700
	75023	975	1,075	1,300	1,700	2,000
	75024	950	1,050	1,275	1,650	1,975
	75025	900	1,000	1,200	1,550	1,850
	75034	775	875	1,050	1,375	1,625
	75035	825	900	1,100	1,425	1,700
	75048	675	750	900	1,175	1,375
	75069	675	750	900	1,175	1,375
	75070	775	875	1,050	1,375	1,625
	75071	825	900	1,100	1,425	1,700
	75074	800	900	1,075	1,400	1,650
	75075	800	900	1,075	1,400	1,650
	75078	825	900	1,100	1,425	1,700
	75080	850	925	1,125	1,475	1,725
	75082	800	900	1,075	1,400	1,650
	75093	900	1,000	1,200	1,550	1,850
	75094	825	900	1,100	1,425	1,700
	75098	700	775	950	1,225	1,475
	75121	825	900	1,100	1,425	1,700
	75164	825	900	1,100	1,425	1,700
	75166	825	900	1,100	1,425	1,700
	75173	825	900	1,100	1,425	1,700
	75189	700	775	925	1,200	1,425
	75248	775	875	1,050	1,375	1,625
	75252	700	775	950	1,225	1,475
	75287	775	850	1,025	1,325	1,575
	75407	825	900	1,100	1,425	1,700
	75409	825	900	1,100	1,425	1,700
	75424	825	900	1,100	1,425	1,700
	75442	800	900	1,075	1,400	1,650
	75452	650	725	875	1,150	1,350
	75454	825	900	1,100	1,425	1,700
	75491	825	900	1,100	1,425	1,700
	75495	825	900	1,100	1,425	1,700
Dallas County	**75001**	**850**	**925**	**1,125**	**1,475**	**1,725**
	75006	725	800	975	1,275	1,500
	75007	850	950	1,150	1,500	1,775
	75019	975	1,075	1,300	1,700	2,000
	75038	725	800	975	1,275	1,500
	75039	975	1,075	1,300	1,700	2,000
	75040	725	800	975	1,275	1,500

75041	625	700	850	1,100	1,300
75042	625	675	825	1,075	1,275
75043	700	775	950	1,225	1,475
75044	850	925	1,125	1,475	1,725
75048	675	750	900	1,175	1,375
75050	675	750	900	1,175	1,375
75051	575	650	775	1,000	1,200
75052	750	825	1,000	1,300	1,550
75060	650	725	875	1,150	1,350
75061	625	700	850	1,100	1,300
75062	700	775	950	1,225	1,475
75063	875	975	1,175	1,525	1,800
75080	850	925	1,125	1,475	1,725
75081	825	900	1,100	1,425	1,700
75082	800	900	1,075	1,400	1,650
75088	675	750	900	1,175	1,375
75089	675	750	900	1,175	1,375
75098	700	775	950	1,225	1,475
75104	775	850	1,025	1,325	1,575
75115	700	775	950	1,225	1,475
75116	700	775	950	1,225	1,475
75125	625	675	825	1,075	1,275
75134	700	775	925	1,200	1,425
75137	850	925	1,125	1,475	1,725
75141	675	750	900	1,175	1,375
75146	700	775	925	1,200	1,425
75149	675	750	900	1,175	1,375
75150	725	800	975	1,275	1,500
75154	700	775	950	1,225	1,475
75159	675	750	900	1,175	1,375
75172	675	750	900	1,175	1,375
75180	650	725	875	1,150	1,350
75181	675	750	900	1,175	1,375
75182	675	750	900	1,175	1,375
75201	1,000	1,125	1,350	1,750	2,075
75202	675	750	900	1,175	1,375
75203	475	550	650	850	1,000
75204	775	875	1,050	1,375	1,625
75205	925	1,025	1,250	1,625	1,925
75206	700	775	950	1,225	1,475
75207	675	750	900	1,175	1,375
75208	550	600	725	950	1,125
75209	650	725	875	1,150	1,350
75210	475	525	625	825	975
75211	575	650	775	1,000	1,200
75212	475	550	650	850	1,000
75214	700	775	925	1,200	1,425
75215	450	500	600	775	925
75216	550	600	725	950	1,125

	75217	600	650	800	1,050	1,225
	75218	700	775	950	1,225	1,475
	75219	625	700	850	1,100	1,300
	75220	575	650	775	1,000	1,200
	75223	550	625	750	975	1,150
	75224	550	600	725	950	1,125
	75225	1,000	1,125	1,350	1,750	2,075
	75226	925	1,025	1,225	1,600	1,900
	75227	600	650	800	1,050	1,225
	75228	600	650	800	1,050	1,225
	75229	625	700	850	1,100	1,300
	75230	700	775	925	1,200	1,425
	75231	550	625	750	975	1,150
	75232	525	575	700	900	1,075
	75233	650	725	875	1,150	1,350
	75234	700	775	950	1,225	1,475
	75235	600	650	800	1,050	1,225
	75236	650	725	875	1,150	1,350
	75237	600	650	800	1,050	1,225
	75238	625	675	825	1,075	1,275
	75240	725	800	975	1,275	1,500
	75241	575	650	775	1,000	1,200
	75242	675	750	900	1,175	1,375
	75243	650	725	875	1,150	1,350
	75244	725	800	975	1,275	1,500
	75246	500	550	675	875	1,050
	75247	675	750	900	1,175	1,375
	75248	775	875	1,050	1,375	1,625
	75249	675	750	900	1,175	1,375
	75251	675	750	900	1,175	1,375
	75252	700	775	950	1,225	1,475
	75253	575	650	775	1,000	1,200
	75254	675	750	900	1,175	1,375
Delta County	**75415**	**450**	**500**	**600**	**775**	**925**
	75432	450	500	600	775	925
	75448	450	500	600	775	925
	75450	450	500	600	775	925
	75469	450	500	600	775	925
Denton County	**75007**	**850**	**950**	**1,150**	**1,500**	**1,775**
	75009	825	900	1,100	1,425	1,700
	75010	925	1,025	1,225	1,600	1,900
	75022	750	825	1,000	1,300	1,550
	75028	750	825	1,000	1,300	1,550
	75034	775	875	1,050	1,375	1,625
	75056	1,000	1,100	1,325	1,725	2,050
	75057	800	900	1,075	1,400	1,650
	75065	750	825	1,000	1,300	1,550

	75067	800	900	1,075	1,400	1,650
	75068	750	825	1,000	1,300	1,550
	75077	750	825	1,000	1,300	1,550
	75078	825	900	1,100	1,425	1,700
	75093	900	1,000	1,200	1,550	1,850
	75287	775	850	1,025	1,325	1,575
	76052	650	725	875	1,150	1,350
	76201	600	650	800	1,050	1,225
	76205	700	775	950	1,225	1,475
	76207	700	775	950	1,225	1,475
	76208	750	825	1,000	1,300	1,550
	76209	750	825	1,000	1,300	1,550
	76210	750	825	1,000	1,300	1,550
	76226	750	825	1,000	1,300	1,550
	76227	750	825	1,000	1,300	1,550
	76234	525	575	700	900	1,075
	76247	750	825	1,000	1,300	1,550
	76249	750	825	1,000	1,300	1,550
	76258	750	825	1,000	1,300	1,550
	76259	750	825	1,000	1,300	1,550
	76262	725	800	975	1,275	1,500
	76266	750	825	1,000	1,300	1,550
	76272	750	825	1,000	1,300	1,550
Ellis County	**75101**	**600**	**650**	**800**	**1,050**	**1,225**
	75119	575	650	775	1,000	1,200
	75125	625	675	825	1,075	1,275
	75152	600	650	800	1,050	1,225
	75154	700	775	950	1,225	1,475
	75165	625	700	850	1,100	1,300
	75167	600	650	800	1,050	1,225
	76041	600	650	800	1,050	1,225
	76050	550	625	750	975	1,150
	76055	600	650	800	1,050	1,225
	76064	600	650	800	1,050	1,225
	76065	600	650	800	1,050	1,225
	76084	575	650	775	1,000	1,200
	76651	600	650	800	1,050	1,225
	76670	600	650	800	1,050	1,225
Hunt County	**75135**	**500**	**550**	**675**	**875**	**1,050**
	75169	500	550	675	875	1,050
	75189	700	775	925	1,200	1,425
	75401	475	550	650	850	1,000
	75402	575	650	775	1,000	1,200
	75422	500	550	675	875	1,050
	75423	500	550	675	875	1,050
	75428	450	500	600	775	925
	75442	800	900	1,075	1,400	1,650

	75449	500	550	675	875	1,050
	75452	650	725	875	1,150	1,350
	75453	500	550	675	875	1,050
	75474	500	550	675	875	1,050
	75496	500	550	675	875	1,050
Kaufman County	**75114**	**550**	**625**	**750**	**975**	**1,150**
	75126	550	625	750	975	1,150
	75142	550	625	750	975	1,150
	75143	550	625	750	975	1,150
	75147	550	625	750	975	1,150
	75156	550	625	750	975	1,150
	75157	550	625	750	975	1,150
	75158	550	625	750	975	1,150
	75159	675	750	900	1,175	1,375
	75160	575	650	775	1,000	1,200
	75161	550	625	750	975	1,150
	75169	500	550	675	875	1,050
Rockwall County	**75032**	**725**	**800**	**975**	**1,275**	**1,500**
	75087	700	775	925	1,200	1,425
	75088	675	750	900	1,175	1,375
	75089	675	750	900	1,175	1,375
	75098	700	775	950	1,225	1,475
	75132	725	800	975	1,275	1,500
	75189	700	775	925	1,200	1,425

SCHEDULE D - FY 2011 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
California	Los Angeles-Long Beach, CA HUD Metro FMR A	$648
	Orange County, CA HUD Metro FMR Area	$787
	Riverside-San Bernardino-Ontario, CA MSA	$509
	San Diego-Carlsbad-San Marcos, CA MSA	$795
	Santa Rosa-Petaluma, CA MSA	$689
	Vallejo-Fairfield, CA MSA	$554
Colorado	Boulder, CO MSA	$445
Maryland	St. Mary's County	$480
Oregon	Bend, OR MSA	$347
	Salem, OR MSA	$472
Pennsylvania	Adams County	$535
Washington	Olympia, WA MSA	$580
	Seattle-Bellevue, WA HUD Metro FMR Area	$639
West Virginia	Logan County	$435
	McDowell County	$435
	Mercer County	$435
	Mingo County	$435
	Wyoming County	$435

[FR Doc. 2010–19084 Filed 8–3–10; 8:45 am]
BILLING CODE 4210–67–C

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0113

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR Part 874—General Reclamation Requirements.

DATES: Comments on the proposed information collections must be received by October 4, 2010, to be assured of consideration.

ADDRESSES: Mail comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or via e-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies the information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 874.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment-including your

personal indentifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR Part 874—General Reclamation Requirements.

OMB Control Number: 1029–0113.

Summary: Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. 30 CFR 874.17 requires consultation between the AML agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 23 State regulatory authorities and Indian tribes.

Total Annual Responses: 23.

Total Annual Burden Hours: 1,610.

Dated: July 21, 2010.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2010–18348 Filed 8–3–10; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2010–N148; 50120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of Five Listed Species: Delmarva Peninsula Fox Squirrel, Northeastern Bulrush, Furbish Lousewort, Chittenango Ovate Amber Snail, and Virginia Round-Leaf Birch

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Under the Endangered Species Act of 1973 (ESA), we, the U.S. Fish and Wildlife Service (Service), announce our initiation of 5-year reviews of five listed species: Delmarva Peninsula fox squirrel, northeastern bulrush, Furbish lousewort, Chittenango ovate amber snail, and Virginia round-leaf birch. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the original listing of each of these species. Based on the results of these 5-year reviews, we will make the requisite findings under the ESA.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than October 4, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information on individual species to the following U.S. Fish and Wildlife Service offices and individuals, as follows:

Delmarva Peninsula fox squirrel—By mail to Chesapeake Bay Field Office, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, MD 21401, to the attention of Cherry Keller, or by e-mail to *cherry_keller@fws.gov.* For more information call (410) 573–4532.

Northeastern bulrush—By mail to Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, PA 16801, to the attention of Carole Copeyon, or by e-mail to *carole_copeyon@fws.gov.* For more information call (814) 234–4090, extension 232.

Furbish lousewort—By mail to Maine Field Office, U.S. Fish and Wildlife Service, 17 Godfrey Drive, Suite 2, Orono, ME 04473, to the attention of Mark McCollough, or by e-mail to *mark_mccollough@fws.gov.* For more information call (207) 866–3344 extension 115.

Chittenango ovate amber snail—By mail to New York Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, NY 13045, to the attention of Robyn Niver, or by e-mail to *robyn_niver@fws.gov*. For more information call (607) 753–9334.

Virginia round-leaf birch—By mail to Virginia Field Office, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, VA 23061, to the attention of Tylan Dean, or by e-mail to *tylan_dean@fws.gov.* For more information call (804) 693–6694, extension 104.

Information we receive in response to this notice and review will be available for public inspection, by appointment, during normal business hours, at the above addresses for the respective species.

FOR FURTHER INFORMATION CONTACT: Mary Parkin, U.S. Fish and Wildlife Service, Northeast Region, 300 Westgate Center Drive, Hadley, MA 01035; (617) 417–3331; *mary_parkin@fws.gov.*

SUPPLEMENTARY INFORMATION: Under the ESA (16 U.S.C. 1531 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the list (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review.

This notice announces our active review of the following species that are currently listed as endangered: Delmarva Peninsula fox squirrel, listed in 1967 (32 FR 4001); northeastern bulrush, 1991 (56 FR 21091–21096); and Furbish lousewort, 1978 (43 FR 17910–17916). In addition, we are requesting submission of any such information that has become available since the original listing of the following species as threatened: Chittenango ovate amber snail, 1978 (43 FR 28932–28935), and Virginia round-leaf birch, originally listed as endangered in 1978 (43 FR 17910–17916) and reclassified as threatened in 1994 (59 FR 59173–59177).

Public Solicitation of New Information

To ensure that our 5-year reviews are complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the Delmarva Peninsula fox squirrel, northeastern bulrush, Furbish lousewort, Chittenango ovate amber snail, and Virginia round-leaf birch.

A 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include (A) Species biology, including but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to, amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list, and improved analytical methods.

If you wish to provide information for these 5-year reviews, you may submit your comments and materials to the respective lead offices and biologists (*see* **ADDRESSES** section). To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Materials received will be available for public inspection, by appointment, during normal business hours (*see* **ADDRESSES** section).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold personally identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 12, 2010.

Anthony D. Léger,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 2010–19109 Filed 8–3–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–10–L19100000–BJ0000–LRCS44020800]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, thirty (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Program Manager, Bureau of Reclamation, Great Plains Region, Montana Area Office, Billings, Montana, and was necessary to determine the boundaries of Federal Interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 37 N., R. 11 W.

The plat, in 2 sheets, representing the dependent resurvey of portions of the west boundary, the subdivisional lines, and the subdivision of section 7, Township 37 North, Range 11 West, Principal Meridian, Montana, was accepted July 16, 2010.

We will place a copy of the plat, in 2 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in 2 sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 2 sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: July 28, 2010.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2010–19159 Filed 8–3–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cedar Creek and Belle Grove National Historical Park Advisory Commission; Notice of Public Meetings

AGENCY: Department of the Interior, National Park Service, Cedar Creek and Belle Grove National Historical Park Advisory Commission.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Cedar Creek and Belle Grove National Historical Park Advisory Commission will be held to discuss the development and implementation of the Park's general management plan.

Date: September 16, 2010.

Location: Warren County Government Center, 220 North Commerce Avenue, Front Royal, VA.

Date: December 16, 2010.

Location: Strasburg Town Hall Council Chambers, 174 East King Street, Strasburg, VA.

Date: March 17, 2011.

Location: Middletown Town Council Chambers, 7875 Church Street, Middletown, VA.

Date: June 16, 2011

Location: Warren County Government Center, 220 North Commerce Avenue, Front Royal, VA.

All meetings will convene at 8:30 a.m. and are open to the public.

FOR FURTHER INFORMATION CONTACT: Diann Jacox, Superintendent, Cedar Creek and Belle Grove National Historical Park, (540) 868–9176.

SUPPLEMENTARY INFORMATION: Topics to be discussed at the meetings include: review of draft general management plan, land protection planning, historic preservation, and visitor interpretation.

The Park Advisory Commission was designated by Congress to advise on the preparation and implementation of the park's general management plan. Individuals who are interested in the Park, the development and implementation of the plan, or the business of the Advisory Commission are encouraged to attend the meetings.

Dated: July 22, 2010.

Diann Jacox,

Superintendent, Cedar Creek and Belle Grove National Historical Park.

[FR Doc. 2010–19076 Filed 8–3–10; 8:45 am]

BILLING CODE 4310–AR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council Within the Alaska Region

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the Aircraft Overflights Advisory Council. Each meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Friday, September 10, 2010, from 9 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

LOCATION: Murie Science and Learning Center, mile 1.5 of the Denali Park Road, Denali National Park and Preserve, Alaska 99755. Telephone (907) 683–1269.

FOR FURTHER INFORMATION CONTACT: Miriam Valentine, Denali Planning. E-mail: *Miriam_Valentine@nps.gov.* Telephone: (907) 733–9102 at Denali National Park, Talkeetna Ranger Station, P.O. Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine at (907) 733–9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to Order
2. Roll Call and Confirmation of Quorum
3. Chair's Welcome and Introductions
4. Review and Approve Agenda
5. Member Reports
6. Agency and Public Comments
7. Superintendent and NPS Staff Reports
8. Agency and Public Comments
9. Other New Business
10. Agency and Public Comments
11. Set Time and Place of Next Advisory Council Meeting
12. Adjournment

Sue E. Masica,

Regional Director, Alaska Region.

[FR Doc. 2010–19077 Filed 8–3–10; 8:45 am]

BILLING CODE 4310–PF–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–732]

In the Matter of: Certain Devices Having Elastomeric Gel and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 30, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Interactive Life Forms, LLC of Austin, Texas. A letter supplementing the complaint was filed on July 22, 2010. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices having elastomeric gel and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,782,818 ("the '818 patent") and U.S. Patent No. 5,807,360 ("the '360 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2550.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 29, 2010, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices having elastomeric gel and components thereof that infringe one or more of claims 1–7 of the '818 patent and claims 1–12 of the '360 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Interactive Life Forms, LLC, 4401 Freidrich Lane, Bldg. 4, Ste. 400, Austin, TX 78744.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

California Exotic Novelties, Inc., 14235 Ramona Avenue, Chino, CA 91710.
Direct Advantage Values Enterprise, Inc., 1098 San Mateo Avenue, Unit 7, South San Francisco, CA 94080.
Nanma Manufacturing Co., Limited, 60 Wing Tai Road, Chai Wan, Hong Kong Island, Hong Kong.
Shenzhen Shaki Industrial Co., Ltd., F2B1–2/F, Min'ai Industrial Park, Zikengjing Village, Guanlan Town, Bao'an District, Shenzhen, Guangdong, China.
Pipedream Products, Inc., 21350 Lassen Street, Chatsworth, CA 91311.
Tenga Co., Ltd., 2–58–10, Chuo, Nakano-Ku, Tokyo 164–0011, Japan.
Vast Resources, Inc. d/b/a Topco Sales, 9410 De Soto Avenue, Chatsworth, CA 91311.
Convergence Inc., 8842 Evanview Drive, Los Angeles, CA 90067.
E.T.C., Inc. d/b/a Eldorado Trading, Company, Inc., 2325 W. Midway Boulevard, Broomfield, CO 80020.
Gigglesworld Corporation, 22 Bill Horton Way, Wappingers Falls, NY 12590.
Honey's Place, Inc., 640 Glenoaks Boulevard, San Fernando, CA 91340.
Joe Enterprises, Inc., 4848 South 38th Street, Phoenix, AZ 85040.
Liberator, Inc., 202 N. Carson Street, Carson City, NV 89701.
Nalpac Enterprises, Ltd. d/b/a/Nalpac, Ltd., 1111 E 8 Mile Road, Ferndale, MI 48220.
Satistec, LLC, 3960 Howard Hughes Parkway, Ste. 500, Las Vegas, NV 89169.
Universal Distributor, 2110 Centre Pointe Parkway, Santa Clarita, CA 91350.
Williams Trading Co., Inc., 9250 Commerce Highway, Pennsauken, NJ 08110.
W.T.F.N. Inc. d/b/a Holiday Products, 20950 Lassen Street, Chatsworth, CA 91311.
Barnaby Ltd., LLC, 934 Howard Street, San Francisco, CA 94103.
L.F.P., Inc., 8484 Wilshire Boulevard, Ste. 900, Beverly Hills, CA 90211.
LFP Internet Group, LLC, 8484 Wilshire Boulevard, Ste. 900, Beverly Hills, CA 90211.
PHE, Inc., 302 Meadowland Drive, Hillsborough, NC 27278.
Polydigitech Inc., 721 Limerick Lane, Apt. 2B, Schaumburg, IL 60193.
Sawhorse Enterprises, Inc., 1061 Sneath Lane, San Bruno, CA 94066.
TEG, L.L.C., 5601 Granite Parkway, Ste. 295, Plano, TX 75024.
Web Merchants Inc., 1095 Cranbury Road, Ste. 7, Jamesburg, NJ 08831.

(c) The Commission investigative attorney, party to this investigation, is Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: July 29, 2010.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–19105 Filed 8–3–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 28, 2010 a proposed Consent Decree ("proposed Decree") in *United States of America* v. *Ray Crosby,* Civil Action No. 2:10–cv–00715–BCW was lodged with the United States District Court for the District of Utah, Central Division.

In this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), the United States sought to recover response costs incurred by the United States Environmental Protection Agency ("EPA") as a result of releases and threatened releases of hazardous substances from the South West Assay Superfund Site ("the Site"), a former ore processing site located approximately one mile west of Leeds, Utah. The proposed Decree requires the defendant to pay $100,000, in two installments of $50,000, to the United States in reimbursement for a portion of EPA's past response costs at the Site. Mr. Crosby owned the Site at the time of the release or threatened release of hazardous substances and he remains the current owner.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington D.C. 20044–7611, and should refer to *United States of America* v. *Ray Crosby,* D.J. Ref. 90–11–3–09741.

The proposed Decree may be examined at the Office of the United States Attorney, located at 185 South State Street, Suite 300, Salt Lake City, Utah, and at the office of U.S. EPA Region 8, located at 1595 Wynkoop Street, Denver, Colorado. During the public comment period, the proposed Decree may also be examined on the following Department of Justice website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by e-mailing or faxing a request to Tonia Fleetwood: e-mail "*tonia.fleetwood@usdoj.gov*"; fax number (202) 514–0097; phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the

Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–19102 Filed 8–3–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 27, 2009, Johnson Matthey Pharma Services, 70 Flagship Drive, North Andover, Massachusetts 01845, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Hydrocodone (9193)	II
Methylphenidate (1724)	II

The company plans to utilize this facility to manufacture small quantities of the listed controlled substances in bulk and to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey. The controlled substances manufactured in bulk at this facility will be distributed to the company's customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

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 October 4, 2010.

Dated: July 23, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–19078 Filed 8–3–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 29, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number) e-mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Revision of a currently approved collection.

Title of Collection: Energy Employees Occupational Illness Compensation Act Forms (various).

OMB Control Number: 1240–0002.

Form Numbers: EE–1, EE–2, EE–3, EE–4, EE–7, EE–8, EE–9, EE–10, EE–11A, EE–11B, EE–12, EE–13, EE–16 and EE–20.

Estimated Number of Respondents: 57,175.

Estimated Total Annual Burden Hours: 21,729.

Estimated Total Hour Burden Cost (operating/maintaining): $22,781.37.

Affected Public: Individuals or households; Business or other for-profit.

Description: The Office of Workers' Compensation Programs (OWCP) is the primary agency responsible for the administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq*. The Act provides for timely payment of compensation to covered employees and, where applicable, survivors of such employees, who sustained either "occupational illnesses" or "covered illnesses" incurred in the performance of duty for the Department of Energy and certain of its contractors and subcontractors. The Act sets forth eligibility criteria for claimants for compensation under Part B and Part E of the Act, and outlines the various elements of compensation payable from the Fund established by the Act. The information collections in this ICR collect demographic, factual and medical information needed to determine entitlement to benefits under the EEOICPA.

For additional information, see related notice published in the **Federal Register** on March 8, 2010 (Vol. 75 page 10504).

Dated: July 26, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–19112 Filed 8–3–10; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used by customers/researchers for ordering reproductions of NARA's motion picture, audio, and video holdings that are housed in the Washington, DC area of the National Archives and Records Administration. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 4, 2010.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Item Approval Request List.

OMB number: 3095–0025.

Agency form number: NA Form 14110.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 2,616.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 654 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. NARA uses the Item Approval Request List form to track reproduction requests and to provide information for customers and vendors.

Dated: July 29, 2010.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2010–19213 Filed 8–3–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 8:30 a.m., Tuesday, August 3, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER TO BE CONSIDERED: 1. Consideration of Supervisory Activities (3). Closed pursuant to some or all of the following exemptions: (8), (9)(A)(ii) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–19208 Filed 8–2–10; 11:15 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Task Force on Support of Mid-Scale and Multi-investigator Research, of the Committee on Programs and Plans, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: August 12, 2010 at 3 p.m. EDT.

SUBJECT MATTER: Draft charge to the Task Force on Support of Mid-Scale and Multi-investigator Research, of the Committee on Programs and Plans.

STATUS: Open.

LOCATION: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A room will be available for the public to listen in on this teleconference meeting. All visitors must contact the Board Office at least 24 hours prior to the meeting to arrange for a visitor's badge and to obtain the room number. Call 703–292–7000 to request the room number and your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive their visitor's badge on the day of the teleconference.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Matt Wilson, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–19338 Filed 8–2–10; 4:15 pm]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0128; Standard Form 2802 and Standard Form 2802A)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget

(OMB) a request for review of a revised information collection. This information collection, "Application for Refund of Retirement Deductions Civil Service Retirement System" (OMB Control No. 3206–0128; Standard Form 2802), is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. "Current/Former Spouse's Notification of Application for Refund of Retirement Deductions" (OMB Control No. 3206–0128; Standard Form 2802A), is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 3,741 SF 2802 forms are completed annually. We estimate it takes approximately one hour to complete the form. The annual estimated burden is 3,741 hours. Approximately 3,389 SF 2802A forms are processed annually. We estimate it takes approximately 15 minutes to complete this form. The annual burden is 847 hours. The total annual burden is 4,588 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, (Acting) Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–19089 Filed 8–3–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OPM Review; Request for Comments on a Revised Information Collection: (OMB Control No. 3206–0174; Forms RI 20–63, RI 20–116 and RI 20–117)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. "Survivor Annuity Election for a Spouse" (OMB Control No. 3206–0174; Form RI 20–63), is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. (OMB Control No. 3206–0174; Form RI 20–116) is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter is used to supply the information that may have been requested by the annuitant about the cost of electing less than the maximum survivor annuity. (OMB Control No. 3206–0174; RI 20–117) is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity. This letter may be used to ask for more information.

Booklets RI 20–63A, Information on Electing a Survivor Annuity for Your Spouse, and RI 20–63B, Information on Electing a Survivor Annuity for Your Spouse When You are Providing a Former Spouse Survivor Annuity, are no longer needed.

We estimate 2,400 RI 20–63 forms are returned each year electing survivor annuities and 200 annuitants return the cover letter to ask for information about the cost to elect less than the maximum survivor annuity or to refuse to provide any survivor benefit. We estimate it takes an average of 45 minutes per response to complete the form with a burden of 1,800 hours and 10 minutes to complete the letter, which gives a burden of 34 hours. The total burden for RI 20–63 is 1,834 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert, (Acting) Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, Retirement & Benefits/Resource Management, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–19091 Filed 8–3–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Senior Executive Resource Services, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between June 1, 2010, and June 30, 2010. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/.* A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are not codified in the Code of Federal Regulations. These are agency-specific exceptions.

Schedule A

No Schedule A authorities to report during June 2010.

Schedule B

No Schedule B authorities to report during June 2010.

Schedule C

The following Schedule C appointments were approved during June 2010.

Office of Management and Budget

BOGS10021 Confidential Assistant to the General Counsel. Effective June 4, 2010.
BOGS10022 Advisor to the Director, Office of Management and Budget. Effective June 30, 2010.

Department of State

DSGS70110 Special Assistant for Economic and Business Affairs. Effective June 3, 2010.
DSGS70109 Legislative Management Officer for Legislative and Intergovernmental Affairs. Effective June 17, 2010.
DSGS70098 Senior Advisor for Intergovernmental Affairs. Effective June 24, 2010.
DSGS70112 Special Assistant to the Assistant Secretary. Effective June 24, 2010.
DSGS70096 Senior Advisor for Business and Commerce. Effective June 30, 2010.
DSGS70115 Public Affairs Specialist for Western Hemispheric Affairs. Effective June 30, 2010.

Department of Treasury

DYGS00496 Senior Advisor, Business Affairs and Public Liaison. Effective June 4, 2010.
DYGS00529 Senior Advisor for Financial Markets. Effective June 4, 2010.
DYGS60379 Advance Specialist to the Deputy Director, Advance. Effective June 7, 2010.
DYGS00461 Senior Advisor to the Assistant Secretary (Tax Policy). Effective June 14, 2010.
DYGS00530 Special Assistant to the Deputy Chief of Staff. Effective June 14, 2010.
DYGS00531 Press Assistant to the Senior Advisor. Effective June 14, 2010.

Department of Defense

DDGS17286 Special Assistant to the Director, Operational Energy Plans and Programs. Effective June 9, 2010.
DDGS17287 Special Assistant of Defense (Acquisition, Technology, and Logistics). Effective June 16, 2010.
DDGS17289 Special Assistant to the Director, Industrial Policy to the Director, Industrial Policy. Effective June 16, 2010.
DDGS17288 Special Counsel to the General Counsel. Effective June 29, 2010.

Department of Justice

DJGS00609 Legislative Assistant to the Assistant Attorney General (Legislative Affairs). Effective June 8, 2010.
DJGS00208 Confidential Assistant to the Director, Office of Public Affairs. Effective June 11, 2010.
DJGS00611 Public Affairs Specialist to the Director, Office of Public Affairs. Effective June 15, 2010.
DJGS00610 Counsel to the Assistant Attorney General. Effective June 16, 2010.

Department of Homeland Security

DMGS00713 Special Assistant for Policy. Effective June 2, 2010.
DMGS00131 Legislative Assistant for Legislative Affairs. Effective June 18, 2010.

Department of the Interior

DIGS01186 Special Assistant for Policy Management and Budget. Effective June 1, 2010.
DIGS01185 Deputy Chief of Staff for Land and Minerals Management. Effective June 8, 2010.
DIGS01188 Special Assistant to the Director of Advance. Effective June 17, 2010.
DIGS01189 Director of New Media for the Office of Communications. Effective June 17, 2010.
DIGS01190 Special Assistant for Ocean Energy Management, Regulation and Enforcement. Effective June 24, 2010.
DIGS01191 Special Assistant for Intergovernmental Affairs. Effective June 28, 2010.
DIGS01192 Deputy Press Secretary/ Hispanic Outreach. Effective June 28, 2010.

Department of Agriculture

DAGS01179 Chief of Staff for Research, Education and Economics. Effective June 28, 2010.

Department of Commerce

DCGS00218 Director, Office of Innovation and Entrepreneurship to the Assistant Secretary for Economic Development. Effective June 9, 2010.
DCGS00468 Deputy General Counsel for Strategic Initiatives. Effective June 14, 2010.
DCGS00327 Senior Advisor to the Secretary. Effective June 21, 2010.
DCGS00191 Counsel to the General Counsel. Effective June 30, 2010.
DCGS00609 Protocol Officer for Scheduling and Advance. Effective June 30, 2010.

Department of Labor

DLGS60117 Senior Policy Advisor and Chief of Research of the Women's Bureau. Effective June 16, 2010.
DLGS60233 Senior Policy Advisor. Effective June 16, 2010.
DLGS60272 Special Assistant for Administration and Management. Effective June 28, 2010.

Department of Health and Human Services

DHGS60337 Confidential Assistant (Health Reform) for Legislation (Planning and Budget). Effective June 1, 2010.
DHGS60626 Deputy Director, Office of External Affairs (Food and Drug Administration) to the Associate Commissioner for External Affairs. Effective June 1, 2010.
DHGS60630 Confidential Assistant for Health Resources and Services Administration. Effective June 2, 2010.
DHGS00493 Confidential Assistant for Political Personnel, Boards and Commissions. Effective June 4, 2010.
DHGS60067 Special Assistant to the Chief of Staff. Effective June 4, 2010.
DHGS60338 Senior Legislative Analyst (Health Reform) for Legislation (Planning and Budget). Effective June 4, 2010.
DHGS60339 Confidential Assistant (Health Reform) for Legislation (Planning and Budget). Effective June 28, 2010.

Department of Education

DBGS00211 Special Assistant to the Chief of Staff. Effective June 15, 2010.
DBGS00242 Chief of Staff for Innovation and Improvement. Effective June 18, 2010.

Securities and Exchange Commission

SEOT61003 Confidential Assistant to a Commissioner. Effective June 9, 2010.

Department of Energy

DEGS00818 Special Assistant for Energy. Effective June 1, 2010.
DEGS00817 Special Assistant to the Chief of Staff. Effective June 2, 2010.
DEGS00819 Advance Representative to the Director, Office of Scheduling and Advance. Effective June 7, 2010.
DEGS00820 Special Assistant to the Director, Office of Public Affairs. Effective June 7, 2010.
DEGS00821 Scheduler to the Director, Office of Scheduling and Advance. Effective June 24, 2010.

Small Business Administration

SBGS00681 Special Assistant for Capital Access. Effective June 9, 2010.

General Services Administration

GSGS01387 Special Assistant to the Chief of Staff. Effective June 11, 2010.
GSGS01440 Sustainability Specialist for Governmentwide Policy. Effective June 11, 2010.
GSGS01442 Associate Administrator for Communications and Marketing. Effective June 11, 2010.
GSGS01443 Congressional Relations Specialist for Congressional and Intergovernmental Affairs. Effective June 16, 2010.
GSGS01421 Regional Administrator to the Senior Counselor. Effective June 28, 2010.

Department of Housing and Urban Development

DUGS00037 Director of Scheduling for the Office of Executive Scheduling and Operations. Effective June 4, 2010.
DUGS00249 Director of Advance for the Office of Executive Scheduling and Operations. Effective June 4, 2010.
DUGS60185 General Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective June 4, 2010.

Department of Transportation

DTGS60192 Special Assistant to the General Counsel. Effective June 21, 2010.
DTGS60114 Senior Advisor for Accessible Transportation for Transportation Policy. Effective June 24, 2010.

Commodity Futures Trading Commission

CTOT00075 Administrative Assistant to the Commissioner. Effective June 11, 2010.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–19093 Filed 8–3–10; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

National Council on Federal Labor-Management Relations Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The National Council on Federal Labor-Management Relations is canceling its September 1, 2010 meeting and rescheduling that meeting for September 20, 2010. The meeting will start at 10 a.m. and will be held in Room 1416, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC. The dates for all Council meetings for the remainder of 2010 were announced in the April 30, 2010 **Federal Register** (75 FR 22871). Interested parties should consult the Council Website at *http://www.lmrcouncil.gov* for the latest information on Council activities, including changes in meeting dates.

The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior government officials. The Council was established by Executive Order 13522, entitled, "Creating Labor-Management Forums to Improve Delivery of Government Services," which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of Labor Management Forums throughout the government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

At its meetings, the Council will continue its work in promoting cooperative and productive relationships between labor and management in the executive branch, by carrying out the responsibilities and functions listed in Section 1(b) of the Executive Order. The meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

FOR FURTHER INFORMATION CONTACT: Thomas Wachter, Acting Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street NW., Room 7H28–E, Washington, DC 20415. Phone (202) 606–2930; Fax (202) 606–2613; or e-mail at *PLR@opm.gov.*

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–19088 Filed 8–3–10; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–84, CP2010–85, CP2010–86, CP2010–87, CP2010–88 and CP2010–89; Order No. 502]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently–filed Postal Service request to add six Global Expedited Package Services 3 contracts to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: August 6, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On July 28, 2010, the Postal Service filed a notice announcing that it has entered into six additional Global Expedited Package Services 3 (GEPS 3) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1–2, Attachment 3. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be

[1] Notice of United States Postal Service Filing of Six Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application for Non–Public Treatment of Materials Filed Under Seal, July 28, 2010 (Notice).

included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Docket Nos. MC2010–28 and CP2010–71, the Postal Service requested that the Commission add GEPS 3 to the competitive product list.[3] Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachments 1A, 1B, 1C, 1D, 1E and 1F—redacted copies of the six contracts and applicable annexes;
- Attachments 2A, 2B, 2C, 2D, 2E and 2F—a certified statement required by 39 CFR 3015.5(c)(2) for each of the six contracts;
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote; and
- Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contracts fit within the Mail Classification Schedule language for GEPS. The Postal Service identifies customer–specific information and general contract terms that distinguish the instant contracts from the baseline GEPS 3 agreement all of which are highlighted in the Notice. *Id.* at 5. These modifications as described in the Postal Service's Notice apply to each of the instant contracts.

The Postal Service contends that the instant contracts are functionally equivalent to the baseline contract for GEPS 3 and share the same cost and market characteristics as the previously filed GEPS contracts. *Id.* at 4. It states that in spite of differences including updates and volume or postage commitments of customers, the changes do not alter the contracts' functional equivalency. *Id.* at 4–5. The Postal Service asserts that "[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these six GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.* at 5.

The Postal Service concludes that its filings demonstrate that each of the new GEPS 3 contracts complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contracts be included within the GEPS 3 product. *Id.* at 6.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010–84, CP2010–85, CP2010–86, CP2010–87, CP2010–88 and CP2010–89 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633 or 3642. Comments are due no later than August 6, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov.*)

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2010–84, CP2010–85, CP2010–86, CP2010–87, CP2010–88 and CP2010–89 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than August 6, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–19104 Filed 8–3–10; 8:45 am]

BILLING CODE 7710–FW–S

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

[3] Docket Nos. MC2010–28 and CP2010–71, Notice and Request of the United States Postal Service to Add Global Expedited Package Services 3 to the Competitive Products List and Notice of Filing of Functionally Equivalent Negotiated Service Agreement and Application for Non–Public Treatment of Materials Filed Under Seal, July 14, 2010.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 3, 2010. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: SBIC Management Assessment Questionnaire (MAQ) & License Applications: Exhibits to SBIC License Application/MAQ.

Frequency: On Occasion.

SBA Form Number's: 2181, 2182, 2183.

Description of Respondents: Small business owners and partners.

Responses: 255.

Annual Burden: 4,300.

Title: Size Standards Declaration.

Frequency: On occasion.

SBA Form Number: 480.
Description of Respondents: SBA applicants.
Responses: 3,200.
Annual Burden: 533.

Title: Financing Eligibility Statement –Social Disadvantage/Economic Disadvantage
Frequency: On occasion.
SBA Form Number's: 1941A, B, C.
Description of Respondents: SBA Disadvantage applicants.
Responses: 80.
Annual Burden: 160.

Title: CDC Annual Report Guide.
Frequency: On Occasion.
SBA Form Number: 1253.
Description of Respondents: SBA applicants.
Responses: 276.
Annual Burden: 7,728.

Title: Entrepreneurial Development Management Information System (EDMIS) Counseling Information.
Frequency: On occasion.
SBA Form Number's: 641, 888.
Description of Respondents: SBA applicants.
Responses: 481,925.
Annual Burden: 54,443.

Title: Small Business Administration Award.
Frequency: On occasion.
SBA Form Number: 3300.
Description of Respondents: SBA award nominees.
Responses: 600.
Annual Burden: 1,200.

Title: SBIC Financial Reports.
Frequency: On occasion.
SBA Form Number's: 468, 468.1, 468.2, 468.3, 468.4.
Description of Respondents: Small business investment companies.
Responses: 1,265.
Annual Burden: 21,175.

Title: Portfolio Financing Report.
Frequency: On occasion.
SBA Form Number: 1031.
Description of Respondents: Small business investment companies.
Responses: 3,700.
Annual Burden: 740.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–19127 Filed 8–3–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12256 and #12257]

South Dakota Disaster #SD–00033

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1929–DR), dated 07/29/2010.

Incident: Severe storms, tornadoes, and flooding

Incident Period: 06/16/2010 through 06/24/2010.

DATES: *Effective Date:* 07/29/2010.

Physical Loan Application Deadline Date: 09/27/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/29/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/29/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Dewey, Perkins, Ziebach, Cheyenne River Indian Reservation.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12256B and for economic injury is 12257B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–19148 Filed 8–3–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12258 and #12259]

Iowa Disaster # IA–00026

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance only for the State of Iowa (FEMA–1930–DR), dated 07/29/2010.

Incident: Severe Storms, flooding, and tornadoes.

Incident Period: 06/01/2010 and continuing.

Effective Date: 07/29/2010.

Physical Loan Application Deadline Date: 09/27/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/29/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/29/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams, Appanoose, Audubon, Buena Vista, Butler, Cherokee, Clay, Davis, Decatur, Franklin, Howard, Humboldt, Iowa, Lee, Lyon, Madison, Marion, Mills, Monroe, Montgomery, Obrien, Osceola, Palo Alto, Ringgold, Shelby, Union, Van Buren, Wapello, Warren, Wayne, Webster, Wright.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ..	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12258B and for economic injury is 12259B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–19149 Filed 8–3–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12244 and # 12245]

Kentucky Disaster Number KY–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kentucky (FEMA–1925–DR), dated 07/23/2010.

Incident: Severe storms, flooding, and mudslides.

Incident Period: 07/17/2010 and continuing.

Effective Date: 07/29/2010.

Physical Loan Application Deadline Date: 09/21/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/25/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kentucky, dated 07/23/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Shelby.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–19150 Filed 8–3–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver to the Nonmanufacturer Rule for Laboratory Equipment Manufacturing (Not-Portable).

SUMMARY: The U.S. Small Business Administration (SBA) is granting a class waiver of the Nonmanufacturer Rule for Not-Portable, Liquid Chromatography Mass Spectrometry (CS–MS) Systems, High Performance Liquid Chromatography (HPLC) Systems, Gas Chromatography Mass Spectrometry (GC–MS) Systems, and, Inductively Coupled Plasma Mass Spectrometry (ICP–MS) Systems under Product Service Code (PSC) 6640 (Laboratory Equipment and Supplies), under North American Industry Classification System (NAICS) code 334516 (Analytical Laboratory Instrument Manufacturing). The basis for waiver is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of this waiver will be to allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses or Participants in SBA's 8(a) Business Development (BD) Program.

DATES: This waiver is effective August 19, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Garcia, Procurement Analyst, by telephone at (202) 205–6842; by FAX at (202) 481–1630; or by e-mail at *amy.garcia@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal supply contracts set aside for small businesses, SDVO small businesses, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. 13 CFR 121.1202(c). The SBA defines "class of products" based on the Office of Management and Budget's NAICS. In addition, SBA uses PSCs to further identify particular products within the NAICS code to which a waiver would apply.

The SBA received a request on June 6, 2010, to waive the Nonmanufacturer Rule for not-portable CS–MS, HPLC, GC–MS, and, ICP–MS Laboratory Equipment under PSC 6640 (Laboratory Equipment and Supplies), under NAICS code 334516 (Analytical Laboratory Instrument Manufacturing).

On July 1, 2010, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for the above listed items. 75 FR 38156 (2010). SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. SBA did not specify not-portable equipment only. No comments were received in response to this notice. In addition, SBA conducted market research using the Dynamic Small Business Search database and no small business manufacturers that participate in the Federal market were identified. Thus, SBA has determined that there are no small business manufacturers of these classes of products. However, because the request for a class waiver was limited to not-portable equipment, SBA is limiting the waiver to not-portable CS–MS Systems, HPLC Systems, GC–MS Systems, and, ICP–MS Systems under PSC 6640 (Laboratory Equipment and Supplies), under NAICS code 334516 (Analytical Laboratory Instrument Manufacturing).

Karen Hontz,

Director, Office of Government Contracting.

[FR Doc. 2010–19126 Filed 8–3–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29373]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 29, 2010.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2010.

A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 2010, and should be accompanied by proof of service on the applicant, 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 Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

John Hancock Equity Trust

[File No. 811–4079]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 22, 2010, applicant transferred its assets to John Hancock Small Cap Equity Fund, a series of John Hancock Investment Trust II, based on net asset value. Expenses of $130,204 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on June 29, 2010.

Applicant's Address: 601 Congress St., Boston, MA 02210–2805.

Destination Funds

[File No. 811–21701]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $5,227 incurred in connection with the liquidation were paid by Destination Capital Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on June 29, 2010.

Applicant's Address: Destination Capital Management, Inc., c/o YCMNET Advisors, Inc., 2001 North Main St., Suite 270, Walnut Creek, CA 94596.

Small Cap Premium & Dividend Income Fund, Inc.

[File No. 811–21746]

Enhanced S&P 500® Covered Call Fund Inc.

[File No. 811–21787]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 24, 2010, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $17,500 incurred by each applicant in connection with the liquidations were paid by applicants and IQ Investment Advisors LLC, applicants' investment adviser. Each applicant has retained approximately $11,500 in cash to pay certain outstanding liabilities.

Filing Date: The applications were filed on July 1, 2010.

Applicants' Address: 4 World Financial Center, 6th Floor, New York, NY 10080.

Telephone Exchange Fund AT&T Shares

[File No. 811–3822]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On October 1, 2008, applicant made a liquidating distribution to its unit holders, based on net asset value. Applicant incurred expenses of $2,003 in connection with the liquidation. As of July 6, 2010, applicant had 33 outstanding unit holders. The trustee will mail a due diligence follow-up notice to each remaining holder every three months until the third anniversary of applicant's termination, at which time any unpaid distributions will be included in the trustee's normal escheatment process.

Filing Dates: The application was filed on March 3, 2010, and amended on March 5, 2010, and July 6, 2010.

Applicant's Address: 60 South Sixth Street., Minneapolis, MN 55402–4422.

Oppenheimer Target Distribution Fund

[File No. 811–22230]

Oppenheimer Target Distribution & Growth Fund

[File No. 811–22231]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Dates: The applications were filed on June 4, 2010, and amended on July 14, 2010.

Applicants' Address: 6803 S. Tucson Way, Centennial, CO 80112.

Ironwood Series Trust

[File No. 811–8507]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 2, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $545 incurred in connection with the liquidation were paid by Ironwood Investment Management, LLC, applicant's investment adviser.

Filing Dates: The application was filed on October 1, 2009, and amended on July 12, 2010.

Applicant's Address: Atlantic Fund Administration, LLC, Three Canal Plaza, Suite 600, Portland, ME 04101.

Van Kampen Partners Trust

[File No. 811–22268]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 22, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $21,600 incurred in connection with the liquidation were paid by Van Kampen Asset Management, applicant's investment adviser.

Filing Dates: The application was filed on March 31, 2010 and amended on July 6, 2010.

Applicant's Address: 522 Fifth Ave., New York, NY 10036.

Ivy Funds

[File No. 811–1028]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 1, 2010, applicant transferred its assets to the Ivy Funds, File No. 811–6569 (changing the state of organization from Massachusetts to Delaware), based on net asset value. Expenses of approximately $2,357,597 incurred in connection with the reorganization were paid by applicant and the surviving fund.

Filing Dates: The application was filed on May 27, 2010, and amended on July 23, 2010.

Applicant's Address: 6300 Lamar Ave., Shawnee Mission, KS 66202–4200.

Ivy Long/Short Hedge Fund LLC

[File No. 811–21246]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on March 12, 2010, and amended on July 22, 2010.

Applicant's Address: Ivy Long/Short Hedge Fund LLC, One Wall St., New York, NY 10286.

Frontier Funds Inc.

[File No. 811–6449]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 12, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $500 incurred in connection with the liquidation were paid by applicant. Applicant has retained less than $400 in cash to cover certain miscellaneous closing expenses.

Filing Dates: The application was filed on March 31, 2010 and amended on June 16, 2010 and July 26, 2010.

Applicant's Address: 333 Bishops Way, Suite 122, Brookfield, WI 53005.

MetLife Investors Variable Annuity Account Five

[File No. 811–7060]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant is a registered separate account, as defined in Section 2(a)(37) under the Investment Company Act of 1940, and is organized as a unit investment trust. The board of directors of MetLife Investors Insurance Company ("MLI") the depositor to the separate account, approved the merger of the separate account into Metlife Investors Variable Annuity Account One on June 29, 2009. The merger was effected on November 9, 2009. MLI bore all expenses relating to the merger.

Filing Date: The application was filed on July 21, 2010.

Applicant's Address: 5 Park Plaza, Suite 1900, Irvine, California 92614.

MetLife Investors Variable Life Account Five

[File No. 811–8433]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant is a registered separate account, as defined in Section 2(a)(37) under the Investment Company Act of 1940, and is organized as a unit investment trust. The board of directors of MetLife Investors Insurance Company ("MLI"), the depositor to the separate account, approved the merger of the separate account into Metlife Investors Variable Life Account One on June 29, 2009. The merger was effected on November 9, 2009. MLI bore all expenses relating to the merger.

Filing Date: The application was filed on July 21, 2010.

Applicant's Address: 5 Park Plaza, Suite 1900, Irvine, California 92614.

Metropolitan Life Variable Annuity Separate Account I

[File No. 811–8732]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant is a registered separate account, as defined in Section 2(a)(37) under the Investment Company Act of 1940, and is organized as a unit investment trust. Metropolitan Life Insurance Company ("MLIC"), the depositor to the separate account, merged the separate account into Metropolitan Life Variable Annuity Separate Account II on November 9, 2009. MLIC bore all expenses relating to the merger.

Filing Date: The application was filed on July 21, 2010.

Applicant's Address: 200 Park Avenue, New York, NY 10166.

The New England Variable Account

[File No. 811–5338]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant is a registered separate account, as defined in Section 2(a)(37) under the Investment Company Act of 1940, and is organized as a unit investment trust. Metropolitan Life Insurance Company ("MLIC"), the depositor to the separate account, merged the separate account into Metropolitan Life Separate Account E on November 9, 2009. MLIC bore all expenses relating to the merger.

Filing Date: The application was filed on July 21, 2010.

Applicant's Address: 200 Park Avenue, New York, NY 10166.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19110 Filed 8–3–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, August 4, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, August 4, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Consideration of amici participation; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 30, 2010.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–19227 Filed 8–2–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62582; File No. SR–OC–2010–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by OneChicago, Amending Rule 419(a), Regulatory Halts

July 28, 2010.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on July 13, 2010, OneChicago, LLC ("OneChicago" or "OCX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC") under Section 5c(c) of the Commodity Exchange Act[3] on July 12, 2010.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OneChicago is proposing to amend its Rule 419(a) and the Interpretation thereto, to make it clear that a "regulatory halt"applies not only to the suspending of all trading in equity securities in the underlying national securities exchange but also to a trading pause on an individual underlying equity security that has been imposed by the rules of the national securities exchange. OneChicago filed a similar rule change on June 15, 2010. However, after further discussion with the staffs of both the Commission and the CFTC it has agreed to make this additional amendment. These changes will make the provisions [sic] Rule 419 consistent with the Order Granting Accelerated Approval to Proposed Rule Changes Relating to Trading Pauses Due to Extraordinary Market Volatility, issued by the Commission on June 10, 2010 (Release No. 34–62252).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is [sic] make it clear that a trading pause imposed by a national securities exchange to an equity security underlying a single stock future will also be subject to a trading pause by the Exchange pursuant to Rule 419. Presently, it is not clear that this is the case because of the language of Commodity Futures Trading Commission Regulation § 41.1(l)(2). This change will clarify any possible confusion.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors and the public interest, and to remove impediments to and perfect the mechanism for a free and open market and a national market system. Accordingly, under Section 6(h)(3)(C) the requirements for listing standards and conditions for trading for security futures must "be no less restrictive than comparable listing standards for options traded on a national securities exchange * * *".

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the OneChicago proposed rule change have not been solicited and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective on July 14, 2010. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[5]

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–OC–2010–03 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–OC–2010–03. This file number should be included on the subject line if e-mail 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 on official business days between the hours of 10 a.m. and 3 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

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(1).

Number SR–OC–2010–03 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19217 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62587; File No. SR–EDGX–2010–08]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.12

July 29, 2010.

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 July 22, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend EDGX Rule 11.12 to modify potential liability caps applicable under the rule. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* at the principal office of the Exchange, on the Commission's Internet Web site at *http://www.sec.gov,* 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange provides a limited exception to its general limitation of liability rules that allows for the payment of claims to Users[3] for order processing failures on the Exchange. The Exchange proposes to modify its process for allocating such payments and extend the time period for Users to submit such claims. Under the proposal, the Exchange will eliminate the $100,000 and $250,000 daily caps on liability and consider all such claims on a monthly basis subject to the already existing $500,000 monthly liability cap. If the total amount of all claims from all Users in calendar month exceeds the $500,000 monthly liability cap, the $500,000 maximum monthly dollar amount will be proportionally allocated among all such claims as set forth in the current rule.

The Exchange is also proposing to extend, until 12 noon ET on the next business day following the day on which the use of the Exchange gives rise to the claim, the time period during which claims seeking compensation must be submitted.

The proposal, in effect, would allow the Exchange an increased capability to compensate a market participant(s) up to the monthly cap of $500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner. Finally, the Exchange notes that other market centers have rules in place to provide limited compensation for system malfunctions.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposal, in effect, would allow the Exchange an increased capability to compensate a market participant(s) up to the monthly cap of $500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5(cc) defines "User" as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

[4] *See* Securities Exchange Act Release No. 60794 (October 6, 2009), 74 FR 52522 (October 13, 2009) (SR–NASDAQ–2009–084) (relating to amendments to NASDAQ Rule 4626); NYSE Arca Equities Rule 13.2; and International Securities Exchange Rule 705.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within the 60-day period beginning on the date 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2010–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2010–08. This file number should be included on the subject line if e-mail 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 a.m. and 3 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 publicly available. All submissions should refer to File Number SR–EDGX–2010–08 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19215 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62596; File No. SR–CBOE–2010–070]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

July 29, 2010.

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 July 26, 2010, 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 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

CBOE proposes to amend proposes to amend [sic] its rules relating to the Penny Pilot Program. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

CBOE proposes to identify the 75 option classes that will be added to the Penny Pilot Program on August 2, 2010, consistent with CBOE's rule filing to extend and expand the Program that was granted immediate effectiveness on October 22, 2010.[3] As described in SR–CBOE–2009–76, the Pilot Program will be expanded by adding 300 option classes, in groups of 75 classes each quarter on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010.[4] The option classes will be identified based on national average daily volume in the six calendar months preceding their addition to the Pilot Program using data compiled by The Options Clearing Corporation, except that the month immediately preceding their addition to the Pilot Program will not be utilized for purposes of the six-month analysis.

The following 75 option classes will be added to the Pilot Program beginning on August 2, 2010:

[3] *See* Securities Exchange Act Release No. 60864 (October 22, 2009), granting immediate effectiveness to SR–CBOE–2009–76.

[4] The classes to be added are among the most actively-traded, multiply-listed option classes that are not currently in the Pilot Program, excluding option classes with high premiums. An option class would be designated as "high premium" if, at the time of selection, the underlying security was priced at $200 per share or above, or the underlying index level was at 200 or above.

Symbol	Security name	Symbol	Security name
MBI	MBIA Inc	CB	Chubb Corp.
ATPG	ATP Oil & Gas Corp/United States	ADM	Archer-Daniels-Midland Co.
YUM	Yum! Brands Inc	HSY	Hershey Co/The.
RCL	Royal Caribbean Cruises Ltd	TXT	Textron Inc.
BPOP	Popular Inc	GGP	General Growth Properties Inc.
EK	Eastman Kodak Co	NOV	National Oilwell Varco Inc.
CNX	Consol Energy Inc	TWX	Time Warner Inc.
MA	Mastercard Inc	XOP	SPDR S&P Oil & Gas Exploration & Production ETF.
DCTH	Delcath Systems Inc	MYL	Mylan Inc/PA.
MTG	MGIC Investment Corp	TSO	Tesoro Corp.
PXP	Plains Exploration & Production Co	CI	CIGNA Corp.
GPS	Gap Inc/The	ESI	ITT Educational Services Inc.
TSL	Trina Solar Ltd	NKE	NIKE Inc.
EWW	iShares MSCI Mexico Investable Market Index Fund	FIS	Fidelity National Information Services Inc.
CRM	Salesforce.com Inc	SUN	Sunoco Inc.
SWN	Southwestern Energy Co	BBBY	Bed Bath & Beyond Inc.
HBAN	Huntington Bancshares Inc/OH	APWR	A–Power Energy Generation Systems Ltd.
EOG	EOG Resources Inc	FWLT	Foster Wheeler AG.
APA	Apache Corp	LNC	Lincoln National Corp.
VVUS	Vivus Inc	RSH	RadioShack Corp.
JDSU	JDS Uniphase Corp	TYC	Tyco International Ltd.
ACI	Arch Coal Inc	CL	Colgate-Palmolive Co.
NE	Noble Corp	FXP	ProShares UltraShort FTSE/Xinhua China 25.
BAX	Baxter International Inc	NTAP	NetApp Inc.
ADSK	Autodesk Inc	SO	Southern Co.
KRE	SPDR KBW Regional Banking ETF	PHM	Pulte Group Inc.
XL	XL Group Plc	HOT	Starwood Hotels & Resorts Worldwide Inc.
WLT	Walter Energy Inc	QLD	ProShares Ultra QQQ.
IBN	ICICI Bank Ltd	VRSN	VeriSign Inc.
EWY.	iShares MSCI South Korea Index Fund	PCL	Plum Creek Timber Co Inc.
WHR	Whirlpool Corp	NBR	Nabors Industries Ltd.
BHI	Baker Hughes Inc	ESRX	Express Scripts Inc.
KMP	Kinder Morgan Energy Partners LP	ACAS	American Capital Ltd.
MRO	Marathon Oil Corp	XLNX	Xilinx Inc.
AGO	Assured Guaranty Ltd	DO	Diamond Offshore Drilling Inc.
GIS	General Mills Inc	CMA	Comerica Inc.
ANR	Alpha Natural Resources Inc	KEY	KeyCorp.
GENZ	Genzyme Corp.		

The minimum increments for all classes in the Penny Pilot (except for the QQQQs, IWM and SPY) are: $0.01 for all option series below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). The minimum increment for all option series in QQQQ, IWM and SPY is $.01.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for an expansion of the Penny Pilot Program for the benefit of market participants and identifies the option classes to be added to the Pilot Program in a manner consistent with CBOE's rule filing SR–CBOE–2009–76 to extend and expand the Pilot Program.

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)[7] of the Securities Exchange Act of 1934 and Rule 19b–4(f)(1)[8] thereunder as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within the 60-day period beginning on the date 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:

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(1).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–070 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–2010–070. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–2010–070 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19222 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62595; File No. SR–BATS–2010–019]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Seventy-Five Options Classes to the Penny Pilot Program

July 29, 2010.

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 July 26, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 is filing with the Commission a proposal for the BATS Exchange Options Market ("BATS Options") to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot") on August 2, 2010. The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.[3]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective August 2, 2010. In the Exchange's filing to adopt rules to govern BATS Options,[4] the Exchange proposed commencing operations for BATS Options by trading all options classes that were, as of such date, traded by other options exchanges pursuant to the Penny Pilot and then expanding the Penny Pilot on a quarterly basis, 75 classes at a time, through August 2010. Each such quarterly expansion would be of the seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding the addition of options to the Penny Pilot would not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on August 2, 2010, based on ADVs for the six months ending June 30, 2010.

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
199	MBI	MBIA Inc	316	CB	Chubb Corp
205	MA	Mastercard Inc	320	ADM	Archer-Daniels-Midland Co
224	ATPG	ATP Oil & Gas Corp/United States	322	HSY	Hershey Co/The
226	YUM	Yum! Brands Inc	323	TXT	Textron Inc
232	RCL	Royal Caribbean Cruises Ltd	324	GGP	General Growth Properties Inc

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 21.5 regarding the Penny Pilot.

[4] *See* Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 (December 8, 2009) (SR–BATS–2009–031) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Trading of Options on the BATS Options Exchange).

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
238	BPOP	Popular Inc	325	NOV	National Oilwell Varco Inc
248	EK	Eastman Kodak Co	326	TWX	Time Warner Inc
252	CNX	Consol Energy Inc	327	XOP	SPDR S&P Oil & Gas Exploration & Production ETF
260	DCTH	Delcath Systems Inc	328	MYL	Mylan Inc/PA
274	MTG	MGIC Investment Corp	329	TSO	Tesoro Corp
277	PXP	Plains Exploration & Production Co	330	CI	CIGNA Corp
278	GPS	Gap Inc/The	331	ESI	ITT Educational Services Inc
280	TSL	Trina Solar Ltd	332	NKE	NIKE Inc
282	EWW	iShares MSCI Mexico Investable Market Index Fund.	335	FIS	Fidelity National Information Services Inc
283	CRM	Salesforce.com Inc	336	SUN	Sunoco Inc
286	SWN	Southwestern Energy Co	338	BBBY	Bed Bath & Beyond Inc
287	HBAN	Huntington Bancshares Inc/OH	340	APWR	A–Power Energy Generation Systems Ltd
288	EOG	EOG Resources Inc	341	FWLT	Foster Wheeler AG
290	APA	Apache Corp	342	LNC	Lincoln National Corp
291	VVUS	Vivus Inc	343	RSH	RadioShack Corp
292	JDSU	JDS Uniphase Corp	344	TYC	Tyco International Ltd
293	ACI	Arch Coal Inc	345	CL	Colgate-Palmolive Co
294	NE	Noble Corp	346	FXP	ProShares UltraShort FTSE/Xinhua China 25
296	BAX	Baxter International Inc	347	NTAP	NetApp Inc
297	ADSK	Autodesk Inc	348	SO	Southern Co
299	KRE	SPDR KBW Regional Banking ETF	349	PHM	Pulte Group Inc
300	XL	XL Group Plc	350	HOT	Starwood Hotels & Resorts Worldwide Inc
302	WLT	Walter Energy Inc	351	QLD	ProShares Ultra QQQ
303	IBN	ICICI Bank Ltd	352	VRSN	VeriSign Inc
305	EWY	iShares MSCI South Korea Index Fund	353	PCL	Plum Creek Timber Co Inc
306	WHR	Whirlpool Corp	354	NBR	Nabors Industries Ltd
307	BHI	Baker Hughes Inc	355	ESRX	Express Scripts Inc
308	KMP	Kinder Morgan Energy Partners LP	356	ACAS	American Capital Ltd
309	MRO	Marathon Oil Corp	357	XLNX	Xilinx Inc
310	AGO	Assured Guaranty Ltd	358	DO	Diamond Offshore Drilling Inc
311	GIS	General Mills Inc	359	CMA	Comerica Inc
312	ANR	Alpha Natural Resources Inc	360	KEY	KeyCorp
314	GENZ	Genzyme Corp			

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(i) of the Act[7] and paragraph (f)(1) of Rule 19b–4 thereunder,[8] the Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within the 60-day period beginning on the date 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 proposal 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 e-mail to *rule-comments@sec.gov.* Please include File No. SR–BATS–2010–019 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–BATS–2010–019. This file number should be included on the subject line if e-mail is used. To help the

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

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 a.m. and 3 p.m. Copies of such filing will also 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–BATS–2010–019 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19221 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62585; File No. SR–NYSEArca–2010–68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Regarding Listing and Trading of the PIMCO Build America Bond Strategy Fund

July 28, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 14, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following fund of the PIMCO ETF Trust (the "Trust") under NYSE Arca Equities Rule 8.600 (Managed Fund Shares): PIMCO Build America Bond Strategy Fund (the "Fund"). The shares of the Fund are collectively referred to herein as the "Shares."

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[4] The Fund will be an actively managed exchange traded fund. The Shares will be offered by the Trust, which is a Delaware statutory trust. The Trust is registered with the Commission as an investment company.[5]

Description of the Shares and the Fund

Pacific Investment Management Company LLC ("PIMCO") is the investment adviser ("Adviser") to each Fund.[6] State Street Bank & Trust Co. is the custodian and transfer agent for the Fund. The Trust's Distributor is Allianz Global Investors Distributors LLC (the "Distributor"), an indirect subsidiary of Allianz Global Investors of America L.P. ("AGI"), PIMCO's parent company. The Distributor is a registered broker-dealer.[7]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing

[4] The Commission previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* 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).

[5] *See* Registration Statement on Amendment No. 15 to Form N–1A for the Trust filed with the Securities and Exchange Commission on March 10, 2010 (File Nos. 333–155395 and 811–22250) (the "Registration Statement"). The descriptions of the Fund and the Shares contained herein are based on information in the Registration Statement.

[6] The Exchange represents that the Adviser, as the investment adviser of the Fund, and its related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The Fund has received an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act"). In compliance with Commentary .04 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

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.[8] 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. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with a broker-dealer, Allianz Global Investors Distributors LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

PIMCO Build America Bond Strategy Fund

According to the Registration Statement, the Fund's investment objective is to seek maximum current income, consistent with preservation of capital. The Fund seeks to achieve its investment objective by investing under normal circumstances at least 80% of its assets in taxable municipal debt securities publicly issued under the Build America Bond program. The Build America Bond program was created as part of the American Recovery and Reinvestment Act of 2009 (the "2009 Act") ("Build America Bonds"). The Fund invests in U.S. dollar-denominated Fixed Income Instruments that are primarily investment grade, but may invest up to 20% of its total assets in high yield securities ("junk bonds") rated B or higher by Moody's Investors Service, Inc., or equivalently rated by Standard & Poor's Ratings Services or Fitch, Inc., or, if unrated, determined by PIMCO to be of comparable quality.[9]

The average portfolio duration of the Fund normally varies within two years (plus or minus) of the duration of The Barclays Capital Build America Bond Index, which as of June 25, 2010, was approximately 12 years.

Municipal bonds generally are issued by or on behalf of states and local governments and their agencies, authorities and other instrumentalities. Unlike most municipal bonds, interest received on Build America Bonds is subject to federal and state income tax. The Fund may invest 25% or more of its total assets in bonds that finance similar projects, such as those relating to education, health care, housing, transportation, and utilities. The portfolio manager focuses on bonds with the potential to offer attractive current income, typically looking for bonds that can provide consistently attractive current yields or that are trading at competitive market prices. The Fund may purchase and sell securities on a when-issued, delayed delivery or forward commitment basis. 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).

According to the Registration Statement, Build America Bonds are taxable municipal bonds on which the issuer receives U.S. Government support for the interest paid. Pursuant to the 2009 Act, issuers of "direct pay" Build America Bonds (*i.e.,* taxable municipal bonds issued to provide funds for qualified capital expenditures) are entitled to receive payments from the U.S. Treasury over the life of the bond equal to 35% (or 45% in the case of Recovery Zone Economic Development Bonds) of the interest paid. For example, if a Build America Bond is issued with a taxable coupon of 10%, the issuer would receive a payment from the U.S. Treasury equaling 3.5% or 4.5% in the case of Recovery Zone Economic Development Bonds. The federal interest subsidy continues for the life of the bonds. Build America Bonds offer an alternative form of financing to state and local governments whose primary means for accessing the capital markets has been through the issuance of tax-free municipal bonds. As of May 2010, approximately $106.5 billion of Build America Bonds have been issued since April 2009.[10]

Issuance of Build America Bonds will cease on December 31, 2010 unless the relevant provisions of the 2009 Act are extended. In the event that the Build America Bond program is not extended, the Build America Bonds outstanding at such time will continue to be eligible for the federal interest rate subsidy, which continues for the life of the Build America Bonds; however, no bonds issued following expiration of the Build America Bond program will be eligible for the federal tax subsidy. If the Build America Bond program is not extended, the Fund will evaluate the Fund's investment strategy and make appropriate changes that it believes are in the best interests of the Fund, including changing the Fund's investment strategy to invest in other taxable municipal securities.[11]

As noted above, under the 2009 Act, the ability of municipalities to issue Build America Bonds expires on December 31, 2010. According to the Registration Statement, if the Build America Bond program is not extended,

[8] 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 investment adviser is 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.

[9] According to the Registration Statement, the Fund may invest in "Fixed Income Instruments," consistent with the Fund's objective. Fixed Income Instruments, as used generally in the Registration Statement, include:

- securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises ("U.S. Government Securities");
- corporate debt securities of U.S. and non-U.S. issuers, including corporate commercial paper;
- mortgage-backed and other asset-backed securities;
- inflation-indexed bonds issued both by governments and corporations;
- trust preferred securities;
- delayed funding loans and revolving credit facilities;
- bank certificates of deposit, fixed time deposits and bankers' acceptances;
- repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments;
- debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises;
- obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and
- obligations of international agencies or supranational entities.

[10] *See* SIFMA Research Quarterly, Q1 2010 which can be found at Securities Industry and Financial Markets Association Web site at *http://www.sifma.org. See also* e-mail from Michael Cavalier, Chief Counsel, Exchange, to Ronesha Butler and Kristie Diemer, Special Counsels, Division, Commission, dated July 21, 2010 ("Exchange Email").

[11] In the event the Build America Bond program is not extended and the Fund determines to change its investment strategy, the Exchange will file a proposed rule change pursuant to Rule 19b–4 under the Act to permit continued listing of the Fund, and the Fund has represented to the Exchange that it will not change its investment strategy until such proposed rule change is approved by the Commission or becomes effective under Section 19(b) of the Act.

the number of Build America Bonds available in the market will be limited, which may negatively affect the value of the Build America Bonds. Because Build America Bonds are a relatively new form of municipal financing and are subject to extensions of the 2009 Act or modifications through future legislation, it is possible a market for such bonds will fail to develop or decline in value, causing Build America Bonds to experience greater illiquidity than other municipal obligations.

The Fund may enter into repurchase agreements, in which the Fund purchases a security from a bank or broker-dealer, which agrees to repurchase the security at the Fund's cost plus interest within a specified time. In addition, the Fund may enter into reverse repurchase agreements and dollar rolls; may purchase securities which it is eligible to purchase on a when-issued basis, may purchase and sell such securities for delayed delivery and may make contracts to purchase such securities for a fixed price at a future date beyond normal settlement time (forward commitments); may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange traded funds; may invest securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1–1 under the 1940 Act; and may invest up to 15% of its net assets in illiquid securities.[12] The Fund will be restricted from investing in derivative instruments such as options contracts, futures contracts, options on futures contracts, and swap agreements (including, but not limited to, credit default swaps and swaps on exchange-traded funds).

The Fund will not invest in non-U.S. equity securities.

The Shares

According to the Registration Statement, Shares of the Fund that trade in the secondary market are "created" at net asset value ("NAV") [13] by Authorized Participants only in block-size Creation Units of 100,000 shares or multiples thereof. Each Authorized Participant enters into an authorized participant agreement with the Fund's Distributor. A creation transaction, which is subject to acceptance by the transfer agent, takes place when an Authorized Participant deposits into the Fund a specified amount of cash and/or a portfolio of securities specified by the Fund in exchange for a specified number of Creation Units.

Similarly, Shares can be redeemed only in Creation Units, generally in-kind for a portfolio of securities held by a Fund and/or for a specified amount of cash. Except when aggregated in Creation Units, Shares are not redeemable by the Fund. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received. Requirements as to the timing and form of orders are described in the authorized participant agreement.

PIMCO makes available on each Business Day via the National Securities Clearing Corporation ("NSCC") or other method of public dissemination, prior to the opening of business (subject to amendments) on the Exchange (currently 9:30 a.m., Eastern time), the identity and the required amount of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information at the end of the previous Business Day).

Creations and redemptions must be made by an Authorized Participant or through a firm that is either a member of the Continuous Net Settlement System of the NSCC or a DTC participant, and in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Unit aggregations.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Availability of Information

The Fund's Web site (*http://www.pimcoetfs.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 Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[14] 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 (or the life of the Fund, if shorter). On each business day, before commencement of trading in Shares in the Core Trading Session [15] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[16] The Web site and information will be publicly available at no charge.

In addition, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data venders at least every 15 seconds during the Core Trading Session on the Exchange. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information

[12] According to the Registration Statement, the term "illiquid securities" for this purpose means securities that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which a Fund has valued the securities.

[13] The NAV of the Fund's shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4 p.m. Eastern time (the "NAV Calculation Time") on any Business Day as defined in the Registration Statement. NAV per share is calculated by dividing a Fund's net assets by the number of Fund shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

[14] The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[15] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

[16] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. 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.

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 high-speed line.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov.*

Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 [17] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

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. Shares of the Fund will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading 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 comprising the Disclosed Portfolio and/or the financial instruments 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. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.[18]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of ISG.[19]

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 ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated as of 4 p.m. Eastern time 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) [20] 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 will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

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**

[17] *See* 17 CFR 240.10A–3.

[18] *See* Exchange Email, *supra* note 10.

[19] For a list of the current members of ISG, see *http://www.isgportal.org.* The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[20] 15 U.S.C. 78f(b)(5).

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 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–68 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–2010–68. This file number should be included on the subject line if e-mail 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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–68 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19083 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62601; File No. SR–NSX–2010–09]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Enhanced Customer Disclosure Rules Concerning Transactions Outside of Regular Trading Hours

July 29, 2010.

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 July 29, 2010, National Stock Exchange, Inc. ("NSX®" or "Exchange") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSX is proposing to adopt certain enhanced customer disclosure requirements applicable to transactions outside of the Exchange's regular trading hours trading session.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to amend Rule 11.1 to adopt enhanced customer disclosure requirements applicable to transactions on the Exchange during trading sessions outside of Regular Trading Hours (as such term is defined below). In addition, the instant rule change proposes to make certain clean-up conforming changes to other Exchange Rules as further described below.

The instant rule filing proposes to adopt as Rule 11.1(c) certain enhanced disclosure requirements applicable to transactions effected on the Exchange outside of the Regular Trading Hours trading session.[5] Specifically, Rule 11.1(c) provides that no ETP Holder may accept an order from a non-ETP Holder for execution outside of Regular Trading Hours without disclosing to such non-ETP Holder that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for UTP Derivative Security products under NSX Rule 15.9. Proposed Rule 11.1(c) provides for the benefit of ETP Holders disclosure language regarding the foregoing risks that would be generally acceptable to

[5] Currently, the Exchange's Regular Trading Hours, as such term is defined in NSX Rule 1(R)(1), are from 8:30 a.m. until 3 p.m. Central Time (9:30 a.m. until 4 p.m. Eastern Time ("ET")). The pre-Regular Trading Hours trading session is from 8 a.m. until 9:30 a.m. ET, and the post-Regular Trading Hours trading session is from 4 p.m. until 6:30 p.m. ET.

the Exchange. In addition, proposed Rule 11.1(d) provides that trades on the Exchange executed and reported outside of Regular Trading Hours shall be designated as ".T" trades. Proposed Rule 11.1(c) and (d) are based on Arca Rule 7.34(e) and (f), respectively.[6]

In addition, the proposed rule change makes clean up changes to NSX Rule 1.5R(1) by modifying the definition of "Regular Trading Hours" to reflect Eastern Time instead of Central Time, consistent with the time references in the remainder of NSX Rules. Further, for purposes of internal consistency and clarity, the references to hours of trading in Interpretation and Policy .01(f) of Rule 15.12 is eliminated as obsolete, and in Rule 15.9B(2) such reference is modified consistent with the usage of the term "Regular Trading Hours". Finally, the definition of "Day Order" in Rule 11.11(b)(2) is modified to clarify that Day Orders will expire at the close of the Exchange's Regular Trading Hours trading session instead of at the close of the regular trading session on the given security's listing exchange.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, 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. Moreover, the proposed rule change is not discriminatory in that all ETP Holders are eligible to participate (or elect to not participate) in effectuating transactions on the Exchange outside of Regular Trading Hours on the same terms and conditions.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the Exchange's proposal is substantially similar to the rules of other national securities exchanges and does not raise any new substantive issues.[13] Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[14]

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.[15]

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2010–09 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 SR–NSX–2010–09. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

[6] *See also* NASDAQ Rule 4631, ISE Rule 2102, Interpretation and Policy .04 and .05, and BATS Rule 3.21.

[7] This modification constitutes no change to the Exchange's current practices because the close of the regular trading sessions on listing exchanges has historically also been 4 p.m. ET.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its 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.

[13] *See supra* note 6. The Commission previously has waived the operative delay for similar rule change proposals of other exchanges under Rule 19b–4(f)(6) on the same basis. *See, e.g.,* Securities Exchange Act Release No. 59963 (May 21, 2009), 74 FR 25787 (May 29, 2009) (SR–BATS–2009–012); and Securities Exchange Act Release No. 58685 (September 30, 2008), 73 FR 58277 (October 6, 2008) (SR–ISE–2008–73).

[14] For the 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).

[15] 15 U.S.C. 78s(b)(3)(C).

you wish to make available publicly. All submissions should refer to File Number SR–NSX–2010–09 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19225 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62600; File No. SR–NYSEArca–2010–72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.31(x)

July 29, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 22, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposed rule change as a "non-controversial" proposal pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. 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 Rule 7.31(x). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange, and at the Commission's Public Reference Room. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 7.31(x) defines the Primary Only ("PO") Order, which allows ETP Holders to direct an order to the primary listing market without first sweeping the NYSE Arca Book. ETP Holders may use PO Orders to direct Market-on-Close ("MOC") or Limit-on-Close ("LOC") to NYSE and NYSE Amex. However, pursuant to NYSE and NYSE Amex rules, orders entered for execution on those markets that are designated as MOC or LOC may not be cancelled or reduced in size after 3:45 PM ET unless the cancellation is entered to correct a legitimate error. MOC and LOC orders entered on NYSE and NYSE Amex may not be cancelled or reduced in size for any reason after 3:58 p.m. ET.

By this filing, NYSE Arca proposes to amend its rules to allow for a new system control that, after 3:45 p.m. ET, will automatically reject any attempt to electronically cancel or reduce in size a PO Order designated as MOC or LOC that has been directed to the NYSE or NYSE Amex. ETP Holders that wish to cancel or cancel and replace, after 3:45 p.m., a PO Order that has been directed to the NYSE or NYSE Amex and designated as MOC or LOC must do so manually by contacting the NYSE Arca Trade Operations Desk.

The Exchange believes this new system control will prevent the cancellation of MOC and LOC orders directed to the NYSE and NYSE Amex that potentially violate the NYSE and NYSE Amex rules. In order to accommodate the cancellation of PO orders designated as MOC or LOC after 3:45 p.m. but before 3:58 p.m. ET that were entered with legitimate errors, NYSE Arca will allow ETP Holders to contact the NYSE Arca Trade Operations Desk via e-mail with an explanation of the legitimate nature of the error claimed to be the reason for the cancellation. Consistent with NYSE and NYSE Amex Equities Rule 123C(3)(c), the NYSE Arca Trade Operations Desk will not process any cancellations or cancel or replace, after 3:58 p.m. ET. NYSE Arca will issue a client notice to all ETP Holders detailing this process prior to implementation of this new system control.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest. Specifically, the changes proposed herein will prevent the cancellation of MOC and LOC orders directed to the NYSE and NYSE Amex that potentially violate the NYSE and NYSE Amex rules.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–72 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–2010–72. This file number should be included on the subject line if e-mail 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 a.m. and 3 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–2010–72 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19224 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its 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 fulfilled this requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62598; File No. SR–NYSEArca–2010–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Relating to the Guaranteed Allocation for Lead Market Makers and Directed Order Market Makers

July 29, 2010.

On June 8, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the guaranteed allocation for Lead Market Makers ("LMM"s) and Directed Order Market Makers ("DOMM"s). Notice of the proposed rule change was published for comment in the **Federal Register** on June 29, 2010.[3] The Commission received no comments on the proposal.

Generally, incoming marketable orders are allocated among contra side orders resting on the NYSE Arca Consolidated Book at the same price on the basis of time priority. Exchange Rule 6.76A nonetheless provides an exception to this principle: When an LMM or DOMM is quoting on the book at the National Best Bid or Offer ("NBBO"), the LMM or DOMM receives a guaranteed allocation of 40% of the incoming order ahead of any other non-Customer interest ranked earlier in time. Rule 6.76A further provides that if a Customer order is ranked earlier than the LMM or DOMM, the Customer order is filled first. The LMM or DOMM then receives its 40% guarantee out of the remainder, if any, of the incoming order, and any other non-Customer is filled from the balance on the basis of time priority.

According to the Exchange, in the latter situation, non-Customers have submitted orders that set a new price, only to find themselves left with just a small portion of an incoming order, because Customer orders at the same price must be satisfied first, and 40% of the balance is allocated to the LMM or DOMM before the price-setter can receive any allocation. Thus, the Exchange proposes to amend Rule 6.76A to provide that the guaranteed allocation will not apply if there are Customer orders on the Consolidated Book ranked ahead of the LMM or DOMM. In such a case, the incoming order will be allocated strictly on the basis of time priority. The guarantee will apply only if there are no resting Customer orders ranked ahead of the LMM or DOMM.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that eliminating the 40% guarantee for LMMs and DOMMs when Customer orders are ranked ahead in the Consolidated Book is reasonable to encourage non-Customer market participants to competitively price their orders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2010–48), be and hereby is approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62328 (June 21, 2010), 75 FR 37516.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19223 Filed 8–3–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34–62592; File No. SR–NASDAQ–2010–095)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Closing Cross Fees for Market-on-Close and Limit-on-Close Orders

July 29, 2010.

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 July 28, 2010, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to increase closing cross fees for Market-on-Close and Limit-on-Close orders. NASDAQ will implement the proposed rule change on August 2, 2010. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to increase the fee it charges for Market-on-Close and Limit-on-Close orders executed in its closing cross from $0.0007 per share executed to $0.0010 per share executed. NASDAQ will continue to charge no fee for other quotes and orders executed in the closing cross.

Since NASDAQ last modified the fee in July 2009, NASDAQ has made significant enhancements to the crossing network operating technology that have resulted in increased performance in the speed of closing crosses executed at NASDAQ, thereby providing market participants with more immediate information about the results of the closing cross. NASDAQ believes this fee change is fair in that it will be incurred by the market participants that benefit from the enhancements.

Market participants entering Market-on-Close and Limit-on-Close orders seek a high probability of executing their orders at the closing price. Other closing cross orders, however, can be entered in response to the order imbalance indicator disseminated prior to the closing cross. The order imbalance indicator provides market participants with information about the number of shares that could not be matched in the closing cross if it occurred at the time of the indicator's dissemination. This information encourages market participants to enter additional orders to eliminate the imbalance, thereby ensuring the execution of more Limit-on-Close and Market-on-Close orders. Accordingly, NASDAQ does not believe that it is appropriate to charge for these orders, since they support the operation of an efficient close process that promotes liquidity and order interaction.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, [3] in general, and with Section 6(b)(4) of the Act, [4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. NASDAQ is increasing its closing cross fee for Market-on-Close and Limit-on-Close orders due to technology enhancements to the NASDAQ crossing network that have resulted in increased performance in the closing crosses executed at NASDAQ. NASDAQ believes the increase is reasonable in comparison to the benefit in expedited closing crosses executed at NASDAQ, and also notes that the fee for executing orders in the closing cross remains much lower than the $0.003 per share fee for executing orders during regular market hours. NASDAQ also believes this fee is equitable, as the technology enhancement to the crossing network benefits the market participants that will incur the increase.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and paragraph (f)(2) of Rule 19b–4 thereunder.[6] 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, as amended, 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 e-mail to *rule-comments@sec.gov.* Please include File

[6] 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. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

Number SR–NASDAQ–2010–095 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–095. This file number should be included on the subject line if e-mail 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–NASDAQ–2010–095, and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19219 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62594; File No. SR–ISE–2010–79]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add 75 Options Classes To the Penny Pilot Program

July 29, 2010.

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 July 23, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of theTerms of Substance of the Proposed Rule Change

The ISE proposes to designate 75 options classes to be added to the pilot program to quote and to trade certain options in pennies (the "Penny Pilot") on August 2, 2010. The text of the proposed rule change is available on the Exchange's Web site (*http://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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to identify the next 75 options classes to be added to the Penny Pilot effective August 2, 2010. The Exchange recently received approval to extend and expand the Penny Pilot through December 31, 2010.[3] In that filing, the Exchange had proposed expanding the Penny Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.[4]

ISE proposes to add the following 75 options classes to the Penny Pilot on August 2, 2010, based on national average daily volume from January 1, 2010 through June 30, 2010:

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
199	MBI	MBIA Inc	316	CB	Chubb Corp
205	MA	Mastercard Inc	320	ADM	Archer-Daniels-Midland Co
224	ATPG	ATP Oil & Gas Corp/United States	322	HSY	Hershey Co/The
226	YUM	Yum! Brands Inc	323	TXT	Textron Inc
232	RCL	Royal Caribbean Cruises Ltd	324	GGP	General Growth Properties Inc
238	BPOP	Popular Inc	325	NOV	National Oilwell Varco Inc
248	EK	Eastman Kodak Co	326	TWX	Time Warner Inc
252	CNX	Consol Energy Inc	327	XOP	SPDR S&P Oil & Gas Exploration & Production ETF
260	DCTH	Delcath Systems Inc	328	MYL	Mylan Inc/PA
274	MTG	MGIC Investment Corp	329	TSO	Tesoro Corp
277	PXP	Plains Exploration & Production Co	330	CI	CIGNA Corp

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009) (SR–ISE–2009–82). The Commission notes that this proposed rule change was submitted pursuant to Section 19(b)(3)(A)(iii) of the Act and was, therefore, effective upon filing. The Commission does not approve proposed rule changes submitted pursuant to this section of the Act.

[4] Index products would be included in the expansion if the underlying index level was under 200.

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
278	GPS	Gap Inc/The	331	ESI	ITT Educational Services Inc
280	TSL	Trina Solar Ltd	332	NKE	NIKE Inc
282	EWW	iShares MSCI Mexico Investable Market Index Fund.	335	FIS	Fidelity National Information Services Inc
283	CRM	Salesforce.com Inc	336	SUN	Sunoco Inc
286	SWN	Southwestern Energy Co	338	BBBY	Bed Bath & Beyond Inc
287	HBAN	Huntington Bancshares Inc/OH	340	APWR	A–Power Energy Generation Systems Ltd
288	EOG	EOG Resources Inc	341	FWLT	Foster Wheeler AG
290	APA	Apache Corp	342	LNC	Lincoln National Corp
291	VVUS	Vivus Inc	343	RSH	RadioShack Corp
292	JDSU	JDS Uniphase Corp	344	TYC	Tyco International Ltd
293	ACI	Arch Coal Inc	345	CL	Colgate-Palmolive Co
294	NE	Noble Corp	346	FXP	ProShares UltraShort FTSE/Xinhua China 25
296	BAX	Baxter International Inc	347	NTAP	NetApp Inc
297	ADSK	Autodesk Inc	348	SO	Southern Co
299	KRE	SPDR KBW Regional Banking ETF	349	PHM	Pulte Group Inc
300	XL	XL Group Plc	350	HOT	Starwood Hotels & Resorts Worldwide Inc
302	WLT	Walter Energy Inc	351	QLD	ProShares Ultra QQQ
303	IBN	ICICI Bank Ltd	352	VRSN	VeriSign Inc
305	EWY	iShares MSCI South Korea Index Fund	353	PCL	Plum Creek Timber Co Inc
306	WHR	Whirlpool Corp	354	NBR	Nabors Industries Ltd
307	BHI	Baker Hughes Inc	355	ESRX	Express Scripts Inc
308	KMP	Kinder Morgan Energy Partners LP	356	ACAS	American Capital Ltd
309	MRO	Marathon Oil Corp	357	XLNX	Xilinx Inc
310	AGO	Assured Guaranty Ltd	358	DO	Diamond Offshore Drilling Inc
311	GIS	General Mills Inc	359	CMA	Comerica Inc
312	ANR	Alpha Natural Resources Inc	360	KEY	KeyCorp
314	GENZ	Genzyme Corp			

2. Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms 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 identifies the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

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 written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) [5] of the Exchange Act and Rule 19b–4(f)(1) [6] thereunder, in that it constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange.

At any time within the 60-day period beginning on the date 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:

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–79 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–ISE–2010–79. This file number should be included on the subject line if e-mail 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 a.m. and 3 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–2010–79 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19220 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62588; File No. SR–EDGA–2010–08]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.12

July 29, 2010.

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 July 22, 2010, the EDGA Exchange, Inc. (the "Exchange"or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend EDGA Rule 11.12 to modify potential liability caps applicable under the rule. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* at the principal office of the Exchange, on the Commission's Internet Web site at *http://www.sec.gov,* 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange provides a limited exception to its general limitation of liability rules that allows for the payment of claims to Users[3] for order processing failures on the Exchange. The Exchange proposes to modify its process for allocating such payments and extend the time period for Users to submit such claims. Under the proposal, the Exchange will eliminate the $100,000 and $250,000 daily caps on liability and consider all such claims on a monthly basis subject to the already existing $500,000 monthly liability cap. If the total amount of all claims from all Users in calendar month exceeds the $500,000 monthly liability cap, the $500,000 maximum monthly dollar amount will be proportionally allocated among all such claims as set forth in the current rule.

The Exchange is also proposing to extend, until 12 noon ET on the next business day following the day on which the use of the Exchange gives rise to the claim, the time period during which claims seeking compensation must be submitted.

The proposal, in effect, would allow the Exchange an increased capability to compensate a market participant(s) up to the monthly cap of $500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner. Finally, the Exchange notes that other market centers have rules in place to provide limited compensation for system malfunctions.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposal, in effect, would allow the Exchange an increased capability to compensate a market participant(s) up to the monthly cap of $500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5(cc) defines "User"as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

[4] *See* Securities Exchange Act Release No. 60794 (October 6, 2009), 74 FR 52522 (October 13, 2009) (SR–NASDAQ–2009–084) (relating to amendments to NASDAQ Rule 4626); NYSE Arca Equities Rule 13.2; and International Securities Exchange Rule 705.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within the 60-day period beginning on the date 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2010–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2010–08. This file number should be included on the subject line if e-mail 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 a.m. and 3 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 publicly available. All submissions should refer to File Number SR–EDGA–2010–08 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19218 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62590; File No. SR–NASDAQ–2010–090]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Fees for Routing to Away Markets

July 29, 2010.

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 July 20, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Exchange submitted Amendment Nos. 1 and 2 to the proposed rule change on July 28, 2010.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

The text of the proposed rule change is set forth below. Proposed new text is *underlined* and deleted text is in [brackets].

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1)–(3) No Change.

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com website.

Exchange	Customer	Firm	MM
BATS	$0.36	$0.55	$0.55
BOX	0.06	0.55	0.55
CBOE	0.06	0.55	0.55
ISE	0.06	0.55	0.55
*ISE Select Symbols * of 100 or more contracts*	*0.26*	*0.55*	*0.55*
NYSE Arca Penny Pilot	0.50	0.55	0.55
NYSE Arca Non Penny Pilot	0.06	0.55	0.55
NYSE AMEX	0.06	0.55	0.55

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment Nos. 1 and 2 make technical corrections to the rule text.

Exchange	Customer	Firm	MM
PHLX (for all options other than PHLX Select Symbols)	0.06	0.55	0.55
PHLX Select Symbols **	0.30	0.55	0.55

** These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.*

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqomx.cchwallstreet.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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing the fees assessed for options orders entered into NOM but routed to and executed on away markets ("routing fees"). The Exchange proposes to assess the following fees for orders routed to the International Securities Exchange LLC ("ISE") in Select Symbols for orders of 100 or more contracts: $.26 per contract for customers and $0.55 per contract for Firms [4] and Market Makers.[5] All other orders that are routed to ISE, including orders that are less than 100 contracts, will be assessed the rates labeled "ISE".[6]

NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange is proposing to amend Rule 7050 to title these fees "ISE Select Symbols of 100 or more contracts."

The Exchange is proposing this amendment in order to recoup clearing and transaction charges incurred by the Exchange when orders are routed to ISE in the ISE Select Symbols and the order is for 100 or more contracts. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange proposes this fee change to account for an increase in cost for routing to ISE relative to the fees in the ISE Select Symbols.[7]

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The Exchange believes that this fee is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing customer orders to ISE in the select symbols of 100 or more contracts on behalf of its members. The Exchange also believes that the proposed fee change for customer orders routed to ISE in the select symbols is equitable because it will be uniformly applied to all customers with orders of 100 or more contracts.

NASDAQ is one of eight options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and paragraph (f)(2) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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, as amended, 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 e-mail to *rule-comments@sec.gov*. Please include File

[4] Firm is an order that clears as "Firm" with the Options Clearing Corporation ("OCC"). This fee of $0.55 is a fixed routing fee for routing orders for the account(s) of Firms.

[5] This fee of $0.55 is a fixed routing fee for routing orders for the account(s) of Market Makers. The Exchange notes that some other options exchanges include Market Maker transaction and clearing fees as "broker-dealer" fees.

[6] The current rates to route an order to ISE are $.06 for customers and $0.55 for Firms and Market Makers. This would not include ISE Select Symbols, which have different fees and are the subject of this filing.

[7] ISE assesses a taker fee of $0.20 for priority customers for orders for 100 or more contracts in its rebates and fees for adding and removing liquidity in select symbols. *See* Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

Number SR–NASDAQ–2010–090 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–090. This file number should be included on the subject line if e-mail 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. 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–NASDAQ–2010–090 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19111 Filed 8–3–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement: Warren County, IA

AGENCY: Federal Highway Administration (FHWA), Iowa DOT, Warren County.

ACTION: Rescind notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA, Iowa DOT and Warren County are issuing this notice to advise the public that the NOI to prepare an environmental impact statement (EIS) for improvements for a proposed roadway project in Warren County, Iowa is being rescinded.

FOR FURTHER INFORMATION CONTACT: Michael La Pietra, Environment and Realty Manager, FHWA Iowa Division Office, 105 Sixth Street, Ames, IA 50010, Phone 515–233–7302; or James P. Rost, Director, Office of Location and Environment, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, Phone 515–239–1798.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document is available for free download from the Federal Bulletin Board, (FBB). The FBB is a free electronic bulletin board service of the Superintendent of Documents, U.S. Government Printing Office (GPO).

The FBB may be accessed in four ways: (1) Via telephone in dial-up mode or via the Internet through (2) telnet, (3) FTP, and (4) the World Wide Web.

For dial-in mode a user needs a personal computer, modem, telecommunications software package and telephone line. A hard disk is recommended for file transfers.

For Internet access a user needs Internet connectivity. Users can telnet or FTP to: *fedbbs.access.gpo.gov.* Users can access the FBB via the World Wide Web at *http://fedbbs.access.gpo.gov.*

User assistance for the FBB is available from 7 a.m. until 5 p.m., Eastern Time, Monday through Friday (except federal holidays) by calling the GPO Office of Electronic Information Dissemination Services at 202–512–1530, toll-free at 888–293–6498; sending an e-mail to *gpoaccess@gpo.gov*; or sending a fax to 202–512–1262.

Access to this notice is also available to Internet users through the **Federal Register**'s home page at *http://www.nara.gov/fedreg.*

Background

The FHWA, in cooperation with the Iowa Department of Transportation (Iowa DOT) and Warren County had a NOI published in the **Federal Register** on April 26, 2007 (Volume 72, Number 80) to complete an environmental impact statement for roadway improvements in Warren County, Iowa.

Due to issues pertaining to project need and scheduling, the above mentioned notice will be rescinded, and a study will be completed instead. Appropriate environmental documents will be completed in the future when and if the project proceeds.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: July 29, 2010.

Lubin M. Quinones,

Division Administrator, FHWA. Iowa Division.

[FR Doc. 2010–19113 Filed 8–3–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–115393–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, REG–115393–98 (TD 8816), Roth IRAs (§§ 1.408A–2, 1.408A–4, 1.408A–5 and 1.408A–7).

DATES: Written comments should be received on or before October 4, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Roth IRAs.

OMB Number: 1545–1616.

Regulation Project Numbers: REG–115393–98.

Abstract: The regulations provide guidance on establishing Roth IRAs, contributions to Roth IRAs, converting amounts to Roth IRAs, recharacterizing IRA contributions, Roth IRA distributions and Roth IRA reporting requirements.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit and not-for-profit organizations.

Estimated Number of Respondents: 3,150,000.

Estimated Time per Respondent: 1 minute for designating an IRA as a Roth IRA. 30 minutes for recharacterizing an IRA contribution.

Estimated Total Annual Burden Hours: 125,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 2, 2010.

Gerald Shields,

Supervisory Tax Analyst.

[FR Doc. 2010–19085 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–37, Extraterritorial Income Exclusion Elections.

DATES: Written comments should be received on or before October 4, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Extraterritorial Income Exclusion Elections.

OMB Number: 1545–1731.

Revenue Procedure Number: Revenue Procedure 2001–37.

Abstract: Revenue Procedure 2001–37 provides guidance for implementing the elections (and revocation of such elections) established under the "FSC Repeal and Extraterritorial Income Exclusion Act of 2000".

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 56.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 19.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 10, 2010.

Gerald Shields,

Supervisory Tax Analyst.

[FR Doc. 2010–19096 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, September 21, 2010, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: July 30, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–19176 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (including the states of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 14, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, September 14, 2010, at 11:00 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 30, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–19181 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, September 13, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, September 13, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 30, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–19175 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 15, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, September 15, 2010, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 30, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–19178 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, September 28, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 30, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–19183 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 15, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, September 15, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 30, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–19177 Filed 8–3–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on August 23–24, 2010, at the St. Regis Washington DC, 923 16th and K Streets, NW., from 8:30 a.m. to 5 p.m. each day. The meeting will be held in the Carlton Ballroom. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On both days, the Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other Veteran benefits programs. Time will be allocated for receiving public comments on the afternoon of August 23. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Mr. Robert Watkins, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Watkins at (202) 461–9214 or e-mail at *Robert.Watkins@va.gov.*

Dated: July 29, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–19226 Filed 8–3–10; 8:45 am]

BILLING CODE P

Federal Register

Wednesday,
August 4, 2010

Part II

Securities and Exchange Commission

17 CFR Parts 210, 239, 240 et al. Mutual Fund Distribution Fees; Confirmations; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 240, 249, 270, and 274

[Release Nos. 33–9128; 34–62544; IC–29367; File No. S7–15–10]

RIN 3235–AJ94

Mutual Fund Distribution Fees; Confirmations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "the Commission") is proposing a new rule and rule amendments that would replace rule 12b–1 under the Investment Company Act, the rule that has permitted registered open-end management investment companies ("mutual funds" or "funds") to use fund assets to pay for the cost of promoting sales of fund shares. The new rule and amendments would continue to allow funds to bear promotional costs within certain limits, and would also preserve the ability of funds to provide investors with alternatives for paying sales charges (*e.g.,* at the time of purchase, at the time of redemption, or through a continuing fee charged to fund assets). Unlike the current rule 12b–1 framework, the proposed rules would limit the cumulative sales charges each investor pays, no matter how they are imposed. To help investors make better-informed choices when selecting a fund that imposes sales charges, the Commission is also proposing to require clearer disclosure about all sales charges in fund prospectuses, annual and semi-annual reports to shareholders, and in investor confirmation statements.

As part of the new regulatory framework, the Commission is proposing to give funds and their underwriters the option of offering classes of shares that could be sold by dealers with sales charges set at competitively established rates—rates that could better reflect the services offered by the particular intermediary and the value investors place on those services. For funds electing this option, the proposal would provide relief from restrictions that currently limit retail price competition for distribution services.

The proposed rule and rule amendments are designed to protect individual investors from paying disproportionate amounts of sales charges in certain share classes, promote investor understanding of fees, eliminate outdated requirements, provide a more appropriate role for fund directors, and allow greater competition among funds and intermediaries in setting sales loads and distribution fees generally.

DATES: Comments must be received on or before November 5, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–15–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–15–10. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also 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 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: With respect to rules and forms under the Investment Company Act and Securities Act, Thoreau A. Bartmann, Senior Counsel, Daniel Chang, Attorney, or C. Hunter Jones, Assistant Director, at 202–551–6792, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

With respect to rule 10b–10 under the Securities Exchange Act, Daniel Fisher, Branch Chief, or Ignacio Sandoval, Attorney, at 202–551–5550, Office of Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing to rescind rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 ("Investment Company Act" or "Act").[1] The Commission is also proposing for comment: New rule 12b–2 [17 CFR 270.12b–2] under the Investment Company Act; amendments to rules 6c–10 [17 CFR 270.6c–10] and 11a–3 [17 CFR 270.11a–3] under the Investment Company Act; amendments to Form N–1A[2] under the Investment Company Act and the Securities Act of 1933 ("Securities Act");[3] amendments to rule 6–07 [17 CFR 210.6–07] of Regulation S–X under the Securities Act; amendments to rule 10b–10 [17 CFR 240.10b–10] and Schedule 14A[4] under the Securities Exchange Act of 1934 ("Exchange Act");[5] technical changes to rule 10b–10; and technical and conforming changes to various rules and forms under the Investment Company Act.

Table of Contents

I. Introduction
II. Background
  A. Mutual Fund Sales Charges
  B. Adoption of Rule 12b–1
  C. Developments Following Rule 12b–1's Adoption
  D. The Current Role of 12b–1 Fees
  E. Additional Commission Consideration of Rule 12b–1
III. Discussion
  A. Summary of Our Proposals
  B. Rescission of Rule 12b–1
  C. Proposed Rule 12b–2: The Marketing and Service Fee
  D. Proposed Amendments to Rule 6c–10: The Ongoing Sales Charge
  E. Proposed Amendments to Rule 10b–10: Transaction Confirmations
  F. Shareholder Approval
  G. Application to Funds of Funds
  H. Application to Funds Underlying Separate Accounts
  I. Proposed Amendments to Rule 6c–10: Account-Level Sales Charge
  J. Amendments To Improve Disclosure to Investors
  K. Proposed Conforming Amendments to Rule 11a–3
  L. Other Proposed Conforming Amendments
  M. Potential Impact of Proposed Rule Changes
  N. Transition

[1] 15 U.S.C. 80a. Unless otherwise noted, all references to statutory sections are to the Investment Company Act and all references to rules under the Investment Company Act will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR part 270].

[2] 17 CFR 239.15A and 274.11A.

[3] 15 U.S.C. 77a.

[4] 17 CFR 240.14a–101.

[5] 15 U.S.C. 78a.

IV. Paperwork Reduction Act
V. Cost-Benefit Analysis
VI. Initial Regulatory Flexibility Analysis
VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation
VIII. Small Business Regulatory Enforcement Fairness Act
IX. Statutory Authority
Text of Proposed Rules and Form Amendments

I. Introduction

More than 87 million Americans, representing slightly less than half of all households, own mutual funds.[6] Some investors buy fund shares directly from mutual fund sponsors without paying a sales charge.[7] However, most fund investors buy through intermediaries.[8] These intermediaries include broker-dealers, banks, insurance companies, financial planners, and retirement plans. When investors use intermediaries to buy fund shares, they typically will pay (either directly or indirectly) some form of sales charge or service fees to compensate the intermediaries for the services they provide.[9]

Investors use intermediaries for a variety of reasons. Some want help in selecting a particular fund or building a diversified portfolio of investments. Others like the convenience of holding a variety of financial assets together in the same account and receiving a single comprehensive account statement. A growing number of investors use mutual funds as a way to fund their retirement plans, college savings accounts, annuity or life insurance contracts, or other tax-advantaged investment vehicles, which are often offered by an intermediary.[10] In some cases, investors use an intermediary (and pay sales charges) not necessarily for the services they obtain from the intermediary, but simply to be able to invest in shares of a particular fund that they cannot buy directly (*i.e.,* that are sold only through intermediaries).

There are over 9,000 funds available to investors, offering a variety of investment strategies to suit different investment needs.[11] Investors can select among many types of intermediaries from which they can purchase fund shares, and have choices as to how they pay for the services of those intermediaries. They may pay a "sales load" at the time they purchase shares, or a deferred sales load when they redeem shares, or they may invest in a fund that pays ongoing sales charges on behalf of investors from fund assets, otherwise known as 12b–1 fees.[12] As an alternative, they may choose to invest through an intermediary that deducts fees directly from the investor's account by a separate agreement (*e.g.,* "wrap fee programs"). Whether an investor pays sales charges depends upon the fee structure of the fund in which the investor chooses to invest, and how those sales charges are paid depends upon the "class" of fund shares that the investor selects.[13]

These sales charge arrangements are disclosed in fund prospectuses, and are governed by a combination of statutory provisions and rules adopted by the Commission and the Financial Industry Regulatory Authority, Inc. ("FINRA"), a self-regulatory organization for broker-dealers.[14] These rules have been in place for many years and, as discussed in more detail below, we believe that they may no longer fully reflect the current economic realities of the mutual fund marketplace or best serve the interests of fund investors. In this Release, we first review how these rules developed, our experience in administering them, changes we have observed in how funds distribute their shares, and the evolving needs of shareholders. We then propose a new framework that would continue to allow funds to give investors choices as to how and when to pay for sales charges, improve disclosure designed to enhance investor understanding of those charges, limit the cumulative sales charges each investor pays, and eliminate uncertainties associated with current requirements while providing a more appropriate role for fund directors. Finally, the proposal would offer funds and their underwriters the option of offering a class of shares that could be sold by intermediaries subject to competition in establishing sales charge rates.

II. Background

A. Mutual Fund Sales Charges

When the Investment Company Act was enacted in 1940, investors paid most of the costs of selling and promoting fund shares in the form of a sales charge or sales "load" deducted from the purchase price at the time of sale by the fund's principal underwriter (typically the fund's adviser or a close affiliate).[15] The sales load financed brokers' commissions, advertisements, and other sales and promotional activities. Only a limited number of funds, called "no-load" funds, marketed their shares directly to investors without the assistance of a retail broker, and did not charge sales loads.[16] The selling costs of no-load funds (primarily advertising) typically were subsidized by the funds' investment advisers out of their profits.[17]

In the past, fund sales charges generally were much higher than those

[6] Investment Company Institute ("ICI"), *Profile of Mutual Fund Shareholders, 2009* (2010) ("Shareholder Profile Report") (*http://ici.org/pdf/rpt_profile10.pdf*). Mutual funds' share of household financial assets has grown steadily from 3 percent in 1980 to 21 percent in 2009. ICI, 2010 Investment Company Fact Book at 10 (2010) (*http://www.ici.org/pdf/2010_factbook.pdf*) ("2010 ICI Fact Book").

[7] These are referred to as "no-load" funds because no sales charge or "load" is charged in connection with the transaction. *See infra* notes 16–17 and accompanying text.

[8] According to the ICI, 80 percent of U.S. households that own mutual funds outside of retirement plans hold some portion of their fund shares through financial professionals (including brokers, financial planners, insurance agents, bank representatives, and accountants). 2010 ICI Fact Book, *supra* note 6, at 85.

[9] Although the use of the term "intermediary" in this Release is not limited to registered broker-dealers, receipt of the fees addressed in this Release may, depending on the services provided, require the recipient to register as a broker-dealer or rely on an exception or exemption from broker-dealer registration. *See also* note 168, *infra,* and accompanying text.

[10] *See* 2010 ICI Fact Book, *supra* note 6, at 97, 118. According to the ICI, U.S. retirement plan assets totaled $16 trillion in 2009. *Id.* The largest individual components were Individual Retirement Accounts ("IRAs") and employer-sponsored defined contribution plans, holding assets of $4.2 trillion and $4.1 trillion, respectively. Mutual funds' share of the IRA market has increased from 22 percent in 1990 to 46 percent in 2009. *Id.* at 98–99. Assets in section 529 college savings plans have grown from $2.6 billion in 2000 to $111 billion in 2009. *Id.* at 118.

[11] 2010 ICI Fact Book, *supra* note 6, at 16. This figure represents the total number of registered open-end funds, and includes separate series of a fund and ETFs.

[12] We will use the term "12b–1 fees" generally to describe fees that are paid out of fund assets pursuant to a plan adopted under rule 12b–1 ("12b–1 plan").

[13] *See infra* Section II.C.3 of this Release.

[14] FINRA rules do not apply directly to mutual funds, but to registered broker-dealers that are FINRA members, including the principal underwriters of most funds. Most funds therefore structure their sales loads to meet FINRA rules in order for their shares to be distributed and sold by registered broker-dealers in the United States.

[15] *See* SEC, *Investment Trusts and Investment Companies,* H.R. Doc. No. 279, 76th Cong., 1st Sess., pt. 3, at 813, 823 (1939) ("Investment Trust Study"). Principal underwriters typically confine themselves to wholesale transactions and leave the public selling to independent retail dealers under sales agreements, although some underwriters have their own "captive" retail sales organizations. *See* Tamar Frankel, The Regulation of Money Managers, § 27.01 (2009 supplement) ("The Regulation of Money Managers"). *See also* Division of Investment Management, U.S. Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation 291 (1992) ("1992 Study"). Although the principal underwriter collects the sales load, for convenience, throughout this Release, we will simply refer to "funds" as imposing sales loads or determining the amount of sales load payable.

[16] *See* Investment Trust Study, *supra* note 15, at 817–18. Some funds also charged low sales loads of one to two percent. *Id.*

[17] *See* 1992 Study, *supra* note 15, at 292.

customarily charged today and raised concerns for Congress and the Commission.[18] The Commission submitted a report to Congress in 1966 concluding that mutual fund sales charges should be lowered.[19] Following this report, Congress amended the Act in 1970 to give rulemaking authority to the National Association of Securities Dealers, Inc. ("NASD") (now FINRA) to prescribe limits to prevent excessive sales loads.[20] Under this authority, in 1975, the NASD adopted a rule placing a ceiling of 8.5 percent on the front-end sales load that a fund distributed by NASD members could charge.[21] Today, few funds impose sales loads that approach the maximum limit, in part because of investor resistance to paying high front-end loads, but also because of the availability of other sources of revenue to pay distribution costs.[22]

B. Adoption of Rule 12b–1

The most significant of these alternative revenue sources came about when the Commission adopted rule 12b–1 in 1980.[23] As described in more detail below, rule 12b–1 permits a fund to use fund assets to pay broker-dealers and others for providing services that are primarily intended to result in the sale of the fund's shares. The Commission adopted rule 12b–1 under its authority in section 12(b) of the Investment Company Act,[24] which authorizes the Commission to regulate the distribution activities of funds that act as distributors of their own securities.[25] Section 12(b) was designed to protect funds from being charged excessive sales and promotional expenses.[26] The requirements of the rule are intended, in part, to address the conflicts of interest between a fund and its investment adviser that arise when a fund bears its own distribution expenses.[27]

The Commission's adoption of rule 12b–1 arose in the context of two significant developments in the mutual fund market that occurred during the 1970s.[28] First, many funds experienced a prolonged period of net redemptions (*i.e.,* redemptions exceeded new sales), which reduced the amount of fund assets.[29] Fund company representatives asserted that using fund assets to fuel the sale of fund shares could benefit fund shareholders by increasing economies of scale and reducing fund expense ratios.[30] The second was the development of money market funds and no-load fund groups, including internally managed funds, which did not charge sales loads but required a source of revenue to support their direct selling efforts.[31] By offering a less expensive way for many investors to become fund shareholders, no-load funds promised to introduce greater price competition in the sale of mutual funds to retail investors, which might lower sales loads for all investors.

Before the rule's adoption, the Commission generally had opposed the use of fund assets for the purpose of financing the distribution of mutual fund shares, noting that existing shareholders of a fund "often derive little or no benefit from the sale of new shares." [32] After engaging in a thorough review of the public policy and legal implications of permitting funds to bear these types of expenses, which included a public hearing and two requests for public comment,[33] the Commission ultimately decided that there may be circumstances in which it would be appropriate for a fund to bear its own distribution expenses.[34]

[18] During the period of 1927–1935, sales loads for broker-sold funds ranged from five to 10 percent, but by 1935 they were often as high as nine to 10 percent. *See* Investment Trust Study, *supra* note 15, pt. 2, 216–17. *See also Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. 799 (1940) (statement of L.M.C. Smith, Associate Counsel, Investment Trust Study, SEC, discussing the "problem" of high sales loads).

[19] The Commission recommended that sales loads be limited to a statutory maximum of five percent from the prevailing typical load of 9.3 percent. *See* SEC, Report on the Public Policy Implications of Investment Company Growth, H.R. REP. No. 2337, 89th Cong., 2d Sess. at 205, 223 ("PPI Report").

[20] Investment Company Act Amendments of 1970, Public Law 91–547, § 12(a), 84 Stat. 1413, 1422 (1970) (codified as amended at section 22(b) of the Act). Section 22(b) vested this rulemaking authority in a securities association registered under section 15A of the Exchange Act. The NASD (now FINRA) was and is the only such registered securities association. The Commission supported the amendment. *See Investment Company Amendments Act of 1970: Hearings on S. 34 and S. 296 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 91st Cong., 1st Sess. 6–8 (1969) (statement of Hugh Owens, SEC Commissioner).

[21] Order Approving Proposed Rule Change by NASD, Investment Company Act Release No. 8980 (Oct. 10, 1975) (approving predecessor rule to NASD Conduct Rule 2830).

[22] *See* The Regulation of Money Managers, *supra* note 15, at § 27.03; ICI, *Trends in the Fees and Expenses of Mutual Funds, 2009* (Apr. 2010) (*http://www.ici.org/pdf/fm-v19n2.pdf*) ("Fee Trends Report") (noting that in 2009 the average maximum front-end load on stock funds was 5.3 percent).

[23] Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 11414 (Oct. 28, 1980) [45 FR 73898 (Nov. 7, 1980)] ("1980 Adopting Release").

[24] Rule 12b–1 was also adopted pursuant to section 38(a) of the Act. *Id.*

[25] Section 12(b) makes it unlawful, with certain exceptions, for any mutual fund "to act as a distributor" of its own shares in contravention of any rules the Commission adopts as "necessary or appropriate in the public interest or for the protection of investors."

[26] *See* Investment Trusts and Investment Companies: Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce, 76th Cong., 3d Sess. 112 (1940) ("House Hearings") (statement of David Schenker, Chief Counsel, Investment Trust Study, SEC) (The purpose of section 12(b) is to prevent mutual funds from incurring "excessive sales, promotion expenses, and so forth.").

[27] When a fund pays promotional costs, the fund's investment adviser or distributor is relieved from bearing the expense itself, and the adviser benefits further if the fund's expenditures result in the growth of the fund's assets and a related increase in advisory fees (because an adviser's fees typically are based on a percentage of fund assets). However, commentators have noted that the benefits to existing fund shareholders from these expenditures may be "speculative at best." *See* Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 10252 (May 23, 1978) [43 FR 23589 (May 31, 1978)] ("Advance Notice of Proposed Rulemaking") at text following n. 3.

[28] *See* Payment of Asset-Based Sales Loads by Registered Open-End Management Investment Companies, Investment Company Act Release No. 16431 (June 13, 1988) [53 FR 23258 (June 21, 1988)] ("1988 Release") at n.14 and accompanying text.

[29] Total redemptions exceeded new sales for six of the seven years between 1971 and 1977. 2010 ICI Fact Book, *supra* note 6, at 125.

[30] *See* Advance Notice of Proposed Rulemaking, *supra* note 27, at n.3 and accompanying text.

[31] *See, e.g.,* Valuation of Debt Instruments and Computation of Current Price per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)]. An investment company is said to have internalized its management functions when most or all of the services traditionally provided by the investment adviser or third parties are performed at cost by salaried employees of the fund or by subsidiaries of the fund. *See* 1988 Release, *supra* note 28, at n.8. When the Commission proposed rule 12b–1, an application was pending from The Vanguard Group for exemptions from the Act to permit Vanguard funds to internalize their marketing and distribution functions and to bear distribution costs through a wholly owned subsidiary of the funds. *See* In the Matter of the Vanguard Group, *et al.,* Opinion of the Commission, Investment Company Act Release No. 11645 (Feb. 25, 1981). The Commission discussed the Vanguard application in the release and asked commenters to address other possible methods whereby funds might be permitted to bear distribution expenses. *See* Advance Notice of Proposed Rulemaking, *supra* note 27, at n.5. The Commission previously had allowed other funds with internalized management functions to pay distribution expenses out of fund assets because it believed these arrangements would significantly reduce the conflicts of interest that otherwise are present when fund assets are used to pay for distributions. *See* 1988 Release, *supra* note 28, at nn.8–10 and accompanying text.

[32] *See* Bearing of Distribution Expenses by Mutual Funds: Statutory Interpretation, Investment Company Act Release No. 9915 (Aug. 31, 1977) [42 FR 44810 (Sept. 7, 1977)] (quoting SEC, Future Structure of the Securities Markets (Feb. 2, 1972) [37 FR 5286 (Mar. 14, 1972)]).

[33] *See* Investment Company Act Release No. 9470 (Oct. 4, 1976) [41 FR 44770 (Oct. 12, 1976)] (announcement of hearings); Advance Notice of Proposed Rulemaking, *supra* note 27; Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 10862 (Sept. 7, 1979) [44 FR 54014 (Sept. 17, 1979)] ("1979 Proposing Release").

[34] The Commission noted, however, that it and its staff would "monitor the operation of the rules closely and will be prepared to adjust the rules in light of experience to make the restrictions on use

The Commission remained concerned, however, about the inherent conflicts of interest on the part of the fund adviser.[35] Therefore, in crafting the conditions of the rule, we sought to minimize the role of the adviser and its affiliates in establishing both the amount and uses of fund assets to support distribution.[36] As adopted, the rule required the fund's board of directors, and in particular its independent directors, to play a key role in deciding the level of the fund's distribution charges and how the revenue would be spent.[37]

Rule 12b–1 requires that, before using fund assets to pay for distribution expenses, a fund must adopt a written plan (a "rule 12b–1 plan") describing all material aspects of the proposed financing of distribution,[38] which must contain provisions similar to several of those the Act requires for advisory contracts between the fund and its investment adviser.[39] The rule 12b–1 plan must be approved initially by the fund's board of directors as a whole, and separately by the "independent" directors.[40] If the plan is adopted after the sale of fund shares to the general public, it also must be approved initially by a vote of at least a majority of the fund's voting securities.[41]

The rule does not restrict the amounts of the fees that may be approved under the plan.[42] It also does not specify all of the activities that are "primarily intended to result in the sale of shares" and therefore may be paid by a fund only according to a rule 12b–1 plan. Nor does it specifically prohibit a fund from paying for non-distribution expenses under a rule 12b–1 plan.[43] Instead of limits or restrictions, the rule requires directors (including a majority of the independent directors) to conclude, in exercising their reasonable business judgment and in light of their fiduciary duties, that there is a reasonable likelihood that the plan will benefit both the fund and its shareholders.[44] The directors have a duty to request and evaluate as much information as is reasonably necessary for the directors to make an informed business decision.[45] The rule also requires any person authorized to direct payments under the plan or any related agreement (such as the fund's underwriter) to provide quarterly reports to the board of directors of all amounts expended under the plan and the purposes for which the expenditures were made.[46] The fund's board of directors (including a majority of the independent directors) must decide each year whether to re-approve the plan based on the same considerations as required initially to adopt the plan.[47] Any material increases in the amounts paid under the plan must be approved by the fund's board, the fund's independent directors, and the fund's shareholders.[48]

In the 1980 Adopting Release, the Commission provided a list of nine factors that were intended to provide guidance to directors in considering whether the use of fund assets for distribution would benefit the fund and its shareholders.[49] The factors included: (i) The need for independent counsel or experts to assist the board; (ii) the "problems" or "circumstances" that make the plan necessary or appropriate; (iii) the causes of such problems or circumstances; (iv) how the plan would address the problems; (v) the merits of possible alternatives; (vi) the interrelationships between the plan and distributors; (vii) the possible benefits of the plan to other persons relative to the benefits to the fund; (viii) the effect of the plan on existing shareholders; and (ix) in deciding whether to continue a plan, whether the plan has produced the anticipated benefits to the fund and its shareholders.[50]

The rule was intended to allow fund boards some latitude to exercise their reasonable business judgment to authorize the distribution arrangements and continue them from year to year as circumstances warranted.[51] The annual re-approval requirement and the factors enumerated in our adopting release reflected an expectation that a fund would use the rule in order to address particular distribution problems, such

of fund assets for distribution either more or less strict." *See* 1980 Adopting Release, *supra* note 23, at section titled "Discussion."

[35] *See id.*

[36] *See id.* at section titled "Independence of Directors." *See also* 1988 Release, *supra* note 28, at section titled "The Development and Use of 'Compensation' Plans" ("The directors' responsibilities under the rule were designed to provide that the directors, not advisers or underwriters, make the fundamental decisions regarding distribution spending.").

[37] *See* 1980 Adopting Release, *supra* note 23, at section titled "Independence of Directors" ("Since rule 12b–1 does not restrict the kinds or amounts of payments which could be made, the role of the disinterested directors in approving such expenditures is crucial.").

[38] Rule 12b–1(b). The plan must cover *indirect* as well as direct payments for distribution. *See* rule 12b–1(a)(2).

[39] *See* 1980 Adopting Release, *supra* note 23, at section titled "Summary" ("The procedures in the rule by which shareholders and directors would approve a plan to use assets for distribution are generally similar to those prescribed by statute for approval of investment advisory contracts."). *See also* sections 15(a) and 15(c) of the Act.

[40] We generally refer to directors who are not "interested persons" of the fund as "independent directors" or "disinterested directors." The term "interested person" is defined in section 2(a)(19) of the Act. However, rule 12b–1 requires directors to meet an additional test. In order to be considered independent for purposes of voting on a rule 12b–1 plan, directors must also have no direct or indirect economic interest in the operation of the plan or in any agreements related to the plan. Rule 12b–1(b)(2). In this Release, when we discuss the role of independent directors, the applicable standard for independence depends on the context.

[41] Rule 12b–1(b)(1). When we originally adopted rule 12b–1 in 1980, shareholders were required to vote whenever a rule 12b–1 plan was instituted, regardless of whether a public offering of fund shares had occurred. *See* 1980 Adopting Release, *supra* note 23, at section titled "Procedural Requirements." However, if a rule 12b–1 plan is adopted prior to the public offering of shares, a shareholder vote would be a mere procedural formality and approval would be almost automatic because all shareholders voting would typically be the fund's organizers. Any investor who purchased shares in a public offering after the initial adoption of the plan would be on notice that the fund charges 12b–1 fees. Therefore, in 1996 we amended the rule to permit funds to adopt a 12b–1 plan prior to a public offering of shares without a shareholder vote. *See* Technical Amendments to Rule Relating to Payments for the Distribution of Shares by a Registered Open-End Management Investment Company, Investment Company Release No. 22201 (Sept. 9, 1996) [61 FR 49010 (Sept. 17, 1996)].

[42] However, as discussed in more detail in Section II.C.1 of this Release, rules adopted by the NASD (now FINRA) prohibit broker-dealers from selling funds that pay more than 0.25 percent (25 basis points) per year of fund assets as "service fees," and more than 0.75 percent (75 basis points) per year of fund assets as "asset-based sales charges," effectively setting the maximum 12b–1 fees at those amounts or less. NASD Conduct Rule 2830(d)(5) and (d)(2)(E).

[43] *See* 1988 Release, *supra* note 28, at n.129.

[44] Rule 12b–1(e). The rule requires that the fund set forth and preserve in the corporate minutes the factors that the directors considered, together with the basis for the decision to use fund assets for distribution. Rule 12b–1(d).

[45] Rule 12b–1(d).

[46] Rule 12b–1(b)(3)(ii).

[47] Rule 12b–1(b)(3)(i).

[48] Rule 12b–1(b)(4). Any other material changes to the plan must be approved by the fund's board and the fund's independent directors. Rule 12b–1(b)(2).

[49] We originally included the factors in the text of the rule when we proposed it for public comment. *See* 1979 Proposing Release, *supra* note 33. In order to avoid the appearance of either unduly constricting the directors' decision-making process or of creating a mechanical checklist, we deleted the list of factors from rule 12b–1 at its adoption. Although we decided not to require the directors to consider any particular factors, the adopting release noted that the enumerated factors "would normally be relevant to a determination of whether to use fund assets for distribution." *See* 1980 Adopting Release, *supra* note 23, at section titled "Factors."

[50] *See* 1980 Adopting Release, *supra* note 23, at section titled "Factors."

[51] *Id.* at sections titled "Discussion" and "Independence of Directors." *See also* rule 12b–1(e) (providing that funds may implement or continue 12b–1 plans "only if the directors who vote to approve such implementation or continuation conclude, in the exercise of reasonable business judgment * * * that there is a reasonable likelihood that the plan will benefit the company and its shareholders"); rule 12b–1(b)(3) (requiring that a 12b–1 plan provide in substance that "it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually" by the fund's board of directors as a whole, and separately by the independent directors).

as periods of net redemption.[52] The rule was also designed to allow distribution arrangements to evolve.[53] However, the rule ultimately resulted in distribution practices that we did not originally anticipate, as described below.[54]

C. Developments Following Rule 12b–1's Adoption

Initially, some funds adopted limited 12b–1 plans and used the revenue to pay for advertising and sales materials.[55] In time, however, funds began to adopt 12b–1 plans with higher fees and used the revenue to compensate fund intermediaries for sales efforts, rather than simply defraying promotional costs.[56] These 12b–1 plans often were coupled with contingent deferred sales loads, or "CDSLs," as part of a "spread load" arrangement, and served as an alternative to a front-end sales load.[57]

Unlike a traditional load, which is commonly referred to as a "front-end" load because it is paid at the time of purchase, fund investors pay a CDSL from their proceeds when they redeem shares.[58] The load is "contingent" because the amount payable reduces over time and usually disappears at the end of a stated period. When combined with the payment of 12b–1 fees, a CDSL operates as a deferred payment plan for sales charges.[59] Instead of paying a sales load at the time of purchase, a greater portion of the investor's money is invested in the fund at the outset, and the investor pays sales charges over time, albeit indirectly through charges against fund assets. An investor who redeems early compensates the fund underwriter (which has already advanced payments to intermediaries) by paying the CDSL in place of uncollected revenues from 12b–1 fees attributable to the investor's assets.

These spread load arrangements raised a number of concerns for the Commission. First, the 12b–1 fees were higher than expected[60] and seemed inconsistent with one of the original arguments that fund managers had advanced in support of rule 12b–1, which was to facilitate the creation of economies of scale that would lower expenses for fund shareholders.[61] Moreover, these plans took on the appearance of more permanent arrangements, which threatened to undermine the role of fund directors in managing the use of fund assets for distribution because the arrangements created multi-year business obligations on the part of distributors. As a practical matter, the arrangements limited the ability of fund directors to terminate the plan because ending the plan would deny distributors their future payments.[62]

The Commission responded to these developments by proposing amendments to rule 12b–1 in 1988, which effectively would have prohibited spread load arrangements.[63] Many commenters opposed the proposed amendments, arguing that spread load plans benefited investors by permitting them to defer their distribution costs and avoid high front-end loads.[64] The Commission never adopted those amendments. Instead, over the years, the Commission sought to address the developing concerns raised by rule 12b–1 by other means, as discussed below.[65]

[52] *See* 1980 Adopting Release, *supra* note 23, at section titled "Factors." *See also* Div. of Inv. Mgmt., SEC, Report on Mutual Fund Fees and Expenses (2000) (*http://www.sec.gov/news/studies/feestudy.htm*); Joel H. Goldberg and Gregory N. Bressler, *Revisiting Rule 12b–1 under the Investment Company Act,* 31 Sec. & Commodities Reg. Rev. 147, 151 (1998) ("Goldberg and Bressler") (factors "presuppose that the 12b–1 plan is designed to solve a particular distribution 'problem' or to respond to specific 'circumstances,' *e.g.,* net redemptions"); Lee R. Burgunder and Karl O. Hartmann, *The Mutual Fund Industry and Rule 12b–1 Plans: An Assessment,* 15 Sec. Reg. L.J. 364 (1988) ("although the rule does not state this directly, the historical circumstances surrounding its preparation as well as its legislative history strongly [indicate] that the rule is aimed at the possible problems associated with periods of stagnant growth or net redemptions, especially for relatively small mutual funds").

[53] *See* 1980 Adopting Release, *supra* note 23, at section titled "General Requirements" ("Recognizing that new distribution activities may continuously evolve in the future, and in view of the impracticability of developing an all-inclusive list, the Commission maintains that the better approach is to define distribution expenses in conceptual terms * * *.").

[54] *See* 1988 Release, *supra* note 28, at paragraph preceding n.46 ("The use of the rule by the fund industry has resulted in many distribution practices that could not have been anticipated when the rule was adopted.").

[55] *See* Goldberg and Bressler, *supra* note 52, at 150. The first 12b–1 plans provided for payments of 0.25 percent or less of average annual net assets and generally were used only to reimburse advisers and underwriters for advertising expenses and the printing and mailing of prospectuses and sales literature. *Id.*

[56] *See* 1992 Study, *supra* note 15, at 322.

[57] *See* Exemptions for Certain Registered Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988) [53 FR 45275 (Nov. 9, 1988)] ("Rule 6c–10 Proposing Release") (proposing to permit funds to impose CDSLs, which were often used in combination with 12b–1 plans "as a substitute for charging investors a front-end sales load").

[58] Rule 22c–1 under the Act requires mutual funds to redeem shares at a price based on their net asset value. In order to impose CDSLs, funds sought and we granted exemptions from this and other provisions to permit shareholders to defer their payment of sales charges until redemption. *See, e.g.,* E.F. Hutton Investment Series, Inc., Investment Company Act Release Nos. 12079 (Dec. 4, 1981) [46 FR 60703 (Dec. 11, 1981)] (notice) and 12135 (Jan. 4, 1982) (order). After issuing numerous exemptions, we codified them in rule 6c–10, which permits funds complying with the rule to impose CDSLs without first having to obtain individual exemptions. Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 20916 (Feb. 23, 1995) [60 FR 11890 (Mar. 1, 1995)]. We later amended the rule to permit other types of deferred sales loads, including a form of account-level sales charge we referred to as an "installment load." Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 22202 (Sept. 9, 1996) [61 FR 49011 (Sept. 17, 1996)] ("1996 Rule 6c–10 Amendments").

[59] *See* 1988 Release, *supra* note 28, at n.69 and accompanying text.

[60] *Id.* at nn.116–23 and accompanying text. *See also* Goldberg and Bressler, *supra* note 52, at nn.22–24 and accompanying text.

[61] *See* Advance Notice of Proposed Rulemaking, *supra* note 27, at n.3 and accompanying text ("Commentators also argued that the use of fund assets to finance distribution activities could lead to increased sales of shares, thereby alleviating the difficulties perceived to result from net redemptions or small asset size," such as higher expense ratios.). The Commission's concern about the changing uses of 12b–1 fees was later reflected in the 1988 proposal to amend rule 12b–1. The amendments would have required annual shareholder approval of 12b–1 plans, because "while shareholders may see good reason to approve a plan in the early years of a fund to stimulate growth to a sufficient level for economies of scale to be achieved, they may have a quite different opinion of the utility of a 12b–1 plan once a fund has matured." 1988 Release, *supra* note 28, at text following n.187.

[62] 1988 Release, *supra* note 28 at section titled "The Development and Use of 'Reimbursement' Plans." *See also* Goldberg and Bressler, *supra* note 52 ("It would be economic folly * * * for a mutual fund underwriter continually to advance sales commissions to selling dealers as part of a CDSL arrangement if it were not virtually certain that the 12b–1 plan would continue in effect indefinitely.").

[63] *See* 1988 Release, *supra* note 28, at nn.144–50 and accompanying text. Among other things, the 1988 proposed amendments would have required that payments under a 12b–1 plan be made on a "current basis," which would have restricted the ability of a fund to pay for distribution expenses incurred on the fund's behalf in prior years (such as when the underwriter advances payment of the sales load to the broker after completion of the sale). In addition, the proposed amendments would have required payments made under a rule 12b–1 plan to be tied to specific distribution services actually provided to the fund and its shareholders. *See also* 1992 Study, *supra* note 15, at 323.

[64] *See, e.g.,* Comment Letter of the ICI at 9–12 (Sept. 19, 1988) (File No. S7–10–88).

[65] Another concern relates to the recent growth in the frequency and amount of payments made by fund advisers to broker-dealers and others distributing fund shares, a practice commonly known as "revenue sharing." Because fund advisers derive their earnings from sources including advisory fees paid by the fund, the payment of distribution expenses by advisers could involve the indirect use of fund assets to pay for distribution. Rule 12b–1 explicitly applies to direct and *indirect* financing of distribution activities. Thus, revenue sharing payments could be construed as an indirect use of fund assets for distribution that is unlawful unless made pursuant to a rule 12b–1 plan. *See supra* note 38. The Commission has historically taken the position that an adviser's financing of distribution activities would not necessarily involve an indirect use of fund assets if the payments are made from profits that are "legitimate" or "not

1. Imposition of Sales Load Caps

In 1992, the Commission approved amendments to NASD Conduct Rule 2830 (the "NASD sales charge rule"), which had the effect of limiting the maximum amount of 12b–1 fees that many funds could deduct from fund assets pursuant to a rule 12b–1 plan, based roughly on the then-existing NASD limits on sales loads.[66] While it does not directly regulate what funds can charge, the NASD (now FINRA) sales charge rule bars registered broker-dealers who are members from selling funds that impose combined sales charges that exceed certain limits. The limits vary based on whether the fund has a 12b–1 fee, a "service fee,"[67] rights of accumulation,[68] and other features.

Prior to 1992, the NASD sales charge rule had not been applied to rule 12b–1 fees that funds deducted from assets as a substitute for a front-end sales load. In 1992, the NASD determined that it was appropriate to amend the rule specifically to encompass *all* forms of mutual fund sales compensation, including these "asset-based sales charges."[69]

As amended, the rule caps the annual amount of asset-based sales charges that a fund may deduct at 75 basis points.[70] In addition, a fund with an asset-based sales charge is subject to an aggregate cap of 6.25 percent of new gross sales (rising to 7.25 percent of new gross sales if the fund does not pay a service fee), plus interest, on the total sales charges levied (*e.g.,* asset-based, front-end, and deferred).[71] This aggregate cap requires a fund with an asset-based sales charge to keep a running balance from which all sales charges imposed by the fund are deducted.[72] Because it is calculated at the fund level based on the amount of aggregate new fund shares sold, the aggregate cap does not limit the actual amount of sales charges that a particular investor may pay.[73] Thus, it is possible for a long-term shareholder in a fund with an asset-based sales charge to pay more in total sales charges than would have been the case if that investor had paid a traditional front-end load.[74]

As amended, the NASD rule also places a cap of 25 basis points on the amount of a service fee that a fund may deduct annually from fund assets in order to pay intermediaries for providing follow-up information and account services to clients over the course of their investment in the fund.[75] Unlike the asset-based sales charge, the service fee is not limited by an aggregate cap and, as a result, is almost always paid for an indefinite period (*i.e.,* for as long as the investor holds the shares).[76]

2. Enhanced Disclosure

Over the years, the Commission has taken several steps designed to improve investor understanding of 12b–1 fees and the impact they have on fund expenses and investor returns. We required funds to include a fee table in the prospectus identifying, among other things, the amount of any 12b–1 fee paid.[77] As part of the 1992 amendments to the NASD sales charge rule, we also approved a new provision prohibiting registered broker-dealers from describing funds as "no-load" funds if the funds charged 12b–1 fees greater than 25 basis points.[78] We amended our proxy rules to require funds to better describe material facts to shareholders when requesting approval of a rule 12b–1 plan or an amendment to the plan.[79]

excessive," *i.e.,* profits that are "derived from an advisory contract which does not result in a breach of fiduciary duty under section 36 of the Act." *See* 1980 Adopting Release, *supra* note 23, at section titled "General Requirements." In contrast, for example, an indirect use of fund assets may result if advisory fees were increased in contemplation of distribution payments by the adviser. We are not addressing revenue sharing practices in connection with these proposals. However, we remain concerned that revenue sharing payments may give broker-dealers and other recipients incentives to market particular funds or fund classes, through "preferred lists" or otherwise, and that such incentives create conflicts of interest (*e.g.,* between a broker-dealer's suitability obligation to its customers and its self-interest in maximizing revenue) that may be inadequately disclosed. We proposed new requirements regarding disclosure of revenue sharing payments in 2004 in connection with our "Point of Sale" proposals. *See* Confirmation Requirements and Point of Sale Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 24, 2004) [69 FR 6438 (Feb. 10, 2004)]. *See also* Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans, and Certain Other Securities, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26778 (Feb. 28, 2005) [70 FR 10521 (Mar. 4, 2005)] (reopening of comment period and supplemental request for comment). We are continuing to consider further rule amendments related to revenue sharing.

[66] NASD Conduct Rule 2830(d). The NASD sales charge rule is currently administered by FINRA. FINRA derives its authority to regulate the level of mutual fund sales charges from section 22(b)(1) of the Act. *See supra* note 20. *See* Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Exchange Act Release No. 30897 (July 7, 1992) [57 FR 30985 (July 13, 1992)] ("1992 NASD Rule Release"). In 2009, FINRA proposed to re-codify the rule, in conjunction with its consolidation of rules issued by the NASD and by the New York Stock Exchange, and to revise the rule with regard to the disclosure of cash compensation. *See* FINRA, Investment Company Securities: FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Investment Company Securities, Regulatory Notice 09–34 (June 2009).

[67] *See infra* note 152 and accompanying text for additional information on service fees.

[68] Rights of accumulation allow investors to qualify for a reduced sales charge (or "breakpoint") based on the aggregate value of shares previously purchased or owned plus the securities being purchased. NASD Conduct Rule 2830(b)(7).

[69] The NASD explained that the changes were necessary to: (i) Assure a level playing field among all members selling mutual fund shares; and (ii) prevent the circumvention of its sales charge caps through the use of rule 12b–1 plans, because it had become possible for funds to use 12b–1 plans to charge investors more for distribution than could have been charged as a front-end sales load under the existing sales charge rule. *See* NASD Notice to Members 92–41; 1992 NASD Rule Release, *supra* note 66. In its comment letter, the ICI agreed that the proposed expansion of the NASD rule to include asset-based sales charges "appropriately recognizes that Rule 12b–1 fees * * * alone or in combination with [CDSLs], generally serve as the functional equivalent of traditional front-end sales loads." Comment Letter of the ICI (May 10, 1991) (File No. SR–NASD–90–69).

[70] NASD Conduct Rule 2830(d)(2)(E)(i).

[71] New gross sales excludes sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of an investment company with multiple classes of shares, or between series of a series investment company. NASD Conduct Rule 2830(d)(2)(A) and (B).

[72] In effect, so long as a fund with asset-based sales charges continues to have new sales, it may never exceed the aggregate cap.

[73] For convenience, in this Release we refer to the aggregate cap as a fund-level cap, but FINRA members may treat each class of shares and each series of a fund as a separate investment company for purposes of the sales charge rule and these calculations. *See* NASD Notice to Members 93–12 at n.1 (1993) ("NASD Sales Charge Rule Q&A").

[74] In our statement on the proposed rule change, we acknowledged this possibility. *See* 1992 NASD Rule Release, *supra* note 66, at discussion following n.16 ("Because the proposed rule change contemplates a minimum standard of fund-level accounting rather than individual shareholder accounting, it is possible that long-term shareholders in a mutual fund that has an asset-based sales charge may pay more in total sales [charges] than they would have paid if the mutual fund did not have an asset-based sales charge."). However, we also noted that individual shareholder accounting would be permitted under the rule amendment, and encouraged its use. *See* Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Exchange Act Release No. 29070 (April 12, 1991) [56 FR 16137 (Apr. 19, 1991)] ("NASD Notice of Proposed Rule Change") at section titled "Method of Calculating the Total Sales Charges" ("It is the NASD's intention that fund-level accounting be required at a minimum, thereby not precluding the use of more protective methods. A fund, based upon its particular circumstances and economic perspective, may choose the option of individual shareholder accounting.").

[75] NASD Conduct Rule 2830(d)(5).

[76] *See* 1992 NASD Rule Release, *supra* note 66, at section III.A.

[77] *See* Consolidated Disclosure of Mutual Fund Expenses, Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192 (Feb. 8, 1988)].

[78] *See* 1992 NASD Rule Release, *supra* note 66. *See also* NASD Conduct Rule 2830(d)(4).

[79] Amendments to Proxy Rules for Registered Investment Companies, Investment Company Act Release No. 20614 (Oct. 13, 1994) [59 FR 52689 (Oct. 19, 1994)].

Through our Web site, we have also provided investors with information and tools designed to enhance their understanding of the fees and distribution expenses they pay as a consequence of owning mutual funds.[80]

3. Multiple Classes

We also permitted funds to offer multiple "classes" of shares, each with its own arrangement for the payment of distribution costs and related shareholder services.[81] These multiple class arrangements were designed to give investors a choice of ways to pay for sales charges.[82] Investors in one class of shares have the same investment experience as investors in the other classes, except for expenses related to distribution and shareholder services. These multiple class arrangements have been adopted by most fund groups that sell through intermediaries.[83]

Class designations are not standardized by law, although funds often use similar nomenclature.[84] Class "A" shares generally are sold with a front-end sales load, and also often have a 12b–1 fee of about 25 basis points.[85] Class "B" shares typically are sold without a front-end load but charge a spread load consisting of a 12b–1 fee of 100 basis points (the maximum rate under NASD Conduct Rule 2830, including a service fee) and a declining CDSL. Class B shares usually convert automatically to class A shares after a fixed period of time has elapsed (commonly six to eight years from the date of purchase).[86] Class "C" shares typically charge a "level load" consisting of a 100 basis point 12b–1 fee that is imposed for as long as the investor owns the shares, and also may charge a small CDSL of one percent if a shareholder redeems within the first year, but seldom convert to class A shares with lower 12b–1 fees.[87] Other classes may be available only to certain types of investors, such as those who invest in retirement plans, are institutional investors, or purchase through a particular intermediary or type of intermediary, such as a financial planner.[88]

D. The Current Role of 12b–1 Fees

Rule 12b–1 plans continue to play a significant role in paying for fund distribution costs. The majority of funds have adopted rule 12b–1 plans, which paid a total of $9.5 billion in 12b–1 fees in 2009 (down from a high of $13.3 billion in 12b–1 fees in 2007).[89]

There has been a trend in fund class share ownership away from those that impose the highest sales loads and 12b–1 fees. In recent years, no-load share classes have attracted more net new cash flow than load share classes.[90] According to Investment Company Institute ("ICI") figures, in 2009, $323 billion flowed into no-load share classes of long-term mutual funds, while in comparison, load share classes only received $39 billion in net new cash flow.[91] In 2009, class B shares experienced net outflow for a seventh consecutive year, with total net outflow of approximately $24 billion.[92] In contrast, net new investment in class A shares was approximately $19 billion, and net new investment in class C shares was approximately $37 billion.[93]

Although more investors appear to be investing in no-load funds and share classes, these statistics do not reflect a trend away from using intermediaries.[94] According to the ICI, 80 percent of investors who own funds outside of a retirement plan use an intermediary that provides professional financial assistance ("financial advisor").[95] Of those investors, almost half own funds purchased solely through financial advisors, while the rest own funds purchased through financial advisors as well as directly from fund companies, mutual fund supermarkets, or discount brokers.[96] The data suggest a growing

[80] *See* Mutual Fund Cost Calculator (*http://www.sec.gov/investor/tools/mfcc/mfcc-intsec.htm*).

[81] *See* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds; Class Voting on Distribution Plans, Investment Company Act Release No. 20915 (Feb. 23, 1995) [60 FR 11876 (Mar. 2, 1995)] (adopting rule 18f–3). Rule 18f–3 contains requirements that protect the rights and obligations of each class as against all other classes, particularly with regard to shareholder voting rights, and prescribes methods for allocating income, expenses, realized gains and losses, and unrealized appreciation and depreciation among classes in a multi-class fund.

[82] *See* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds, Investment Company Act Release No. 19955, at section titled "Background" (Dec. 15, 1993) [58 FR 68074 (Dec. 23, 1993)] (stating that some funds use different classes "to offer investors a choice of methods for paying for the costs of selling fund shares"). *See also* Z. Jay. Wang, Vikram K. Nanda & Lu Zheng, *The ABCs of Mutual Funds: On the Introduction of Multiple Share Classes,* EFA 2005 Moscow Meetings Paper (Feb. 2005) (*http://ssrn.com/abstract=676246*); Vance P. Lesseig, D. Michael Long & Thomas I. Smythe, *Gains to Mutual Fund Sponsors Offering Multiple Share Class Funds,* 25 J. Fin. Res. 81 (2002).

[83] *See* ICI, *Mutual Fund Distribution Channels and Distribution Costs* (July 2, 2003) (*http://www.ici.org/pdf/per09-03.pdf*).

[84] The Commission staff has prepared information on mutual fund share classes, available on the Commission's Web site. *SEC, Mutual Fund Classes* (*http://www.sec.gov/answers/mfclass.htm*). While there are many variations, for convenience, throughout this Release we use the terms "A shares," "B shares," and "C shares" to refer to the typical share class structures, as described in the text above.

[85] Class A shares may also be sold with the load waived. *See infra* note 93 and accompanying text.

[86] *See* 2010 ICI Fact Book, *supra* note 6, at 74. While there is no legal requirement for conversion, funds typically provide it. The conversion feature reflects the underlying economics of class B shares. When the underwriter recoups the commission it has advanced to the selling broker, the shareholder is considered to have paid his share of distribution costs. (If the underwriter has advanced a commission to the intermediary, it would retain 75 basis points of the 100 basis points it collects in 12b–1 fees and forward only the 25 basis points to the intermediary.)

[87] *See supra* note 84.

[88] *Id.*

[89] *See* 2010 ICI Fact Book, *supra* note 6, at 75. This figure excludes 12b–1 fees deducted from assets of funds underlying insurance company separate accounts offering variable annuities and mutual funds that invest primarily in other mutual funds. *See also* Comment Letter of the ICI at Appendix I (July 19, 2007) (File No. 4–538). Unless otherwise noted, references to comment letters in this Release are to letters submitted in response to the Commission's request for comments in connection with a 2007 Commission roundtable on rule 12b–1. *See* SEC Press Release, Commission Announces Roundtable Discussion Regarding Rule 12b–1 (May 29, 2007) (*http://www.sec.gov/news/press/2007/2007-106.htm*). These comment letters are available in File No. 4–538 (*http://www.sec.gov/comments/4-538/4-538.shtml*).

[90] *See* 2010 ICI Fact Book, *supra* note 6, at 76.

[91] *Id.* at 76.

[92] *Id.* at 76. Net outflow from B share classes can result from purchases being exceeded by: (i) Redemptions; and (ii) shares converting to another class after a certain period of time. As a result of their (typically) automatic conversion feature, B shares generally are self-limiting as a class unless they continue to be sold at the same rate as they were sold previously.

[93] *Id.* at 76. Many class A shares today are sold with the load waived or substantially reduced. For example, many funds permit broker-dealers to sell their shares with the front-end load waived or substantially reduced, for use in wrap fee programs. In wrap fee programs, instead of paying a one-time sales charge for each investment purchase, a customer pays the broker an annual percentage of the assets held through that broker in exchange for the ability to buy and redeem securities without additional sales charges. According to one study, in 2008, 60 percent of class A shares were sold at NAV with the load waived. Strategic Insight Mutual Fund Research and Consulting, LLC, *Perspectives on Intermediary Sales: Trends in Fund Sales by Distribution Channel and Share Class* (May 2009). The ICI found that, although the average maximum front-end sales load on stock funds in 2009 was 5.3 percent, the average sales load actually paid by investors was only 1.0 percent, due to the impact of load-waived class A shares. *See* 2010 ICI Fact Book, *supra* note 6, at 65.

[94] Among households owning mutual funds, only 20 percent of these investors purchased directly from mutual funds in 2009. *See* Shareholder Profile Report, *supra* note 6, at 27. The prevalence of mutual fund "supermarkets" (described in note 96, *infra*), employer-sponsored retirement plans, and fee-based financial advisers (advisers who charge investors separately for their services rather than through a load or fee assessed at the fund level) has provided investors alternative means of purchasing no-load funds. *See* 2010 ICI Fact Book, *supra* note 6, at 65. Many investors now purchase no-load funds through these intermediaries.

[95] *See* 2010 ICI Fact Book, *supra* note 6, at 85.

[96] *Id.* at 85. Mutual fund supermarkets, which are sponsored by brokerage firms, "permit investors to purchase and hold a broad range of funds from many different fund sponsors through a single

predominance of no-load or load-waived classes in funds that traditionally were sold with a load.[97] In these circumstances, investors do not pay a sales load, but pay distribution expenses through a separate fee arranged between the intermediary and the investor, and/or through the payment of ongoing "service fees."[98]

A significant use of 12b–1 fees today is for what is typically characterized as "services" provided to investors after the sale by the broker-dealers and other intermediaries who sell the fund. According to the Investment Company Institute, more than half of all 12b–1 fees paid by funds are used for this purpose,[99] with broker-dealers and bank trust departments being the primary recipients. Under the NASD sales charge rule discussed above, up to 25 basis points of fund assets annually may be paid to members as a "service fee."[100]

Amounts deducted from assets in excess of a service fee are typically charged to support the fund's distribution efforts and operate as an alternative to a front-end sales load.[101] These 12b–1 fees, which are used to pay the selling costs of B and C share classes, are "asset-based sales charges" under the NASD sales charge caps and are limited to a maximum of 75 basis points of fund assets, annually, as discussed above.

A common use of 12b–1 fees is to pay for the fund to be included on third-party platforms for purchasing mutual funds, such as employer-sponsored retirement plans and fund supermarkets. Supermarkets and retirement plans have become major avenues by which investors purchase mutual funds. They have assumed many of the recordkeeping and ongoing servicing and support functions for shareholders that funds otherwise would perform, and these are often paid for, at least partially, through 12b–1 fees.[102] Under the NASD sales charge rule, no-load funds are able to compensate discount brokers and supermarkets for the costs of servicing shareholders in those channels through asset-based fees of up to 25 basis points annually of the value of fund shares that are held in the intermediary's client accounts.[103] Funds that are offered as investment options in defined contribution retirement plans also may pay 12b–1 fees (often 50 basis points or more annually) to the plan administrator to offset some of the costs of servicing shareholders (and perhaps other participants) who invest through those plans.[104]

A minor use of 12b–1 fees is to pay expenses of the fund's principal underwriter and for advertising and promotions. Although this was one of the main purposes for which 12b–1 plans originally were intended, in recent years, only about two percent of 12b–1 fees have been used to pay these types of expenses.[105]

E. Additional Commission Consideration of Rule 12b–1

In 2004, the Commission amended rule 12b–1 to prohibit fund advisers from directing fund brokerage to compensate broker-dealers for selling fund shares.[106] When we proposed those amendments, we invited comment on whether the Commission should consider additional changes to the rule, including potentially rescinding it.[107] We made this request after observing that the current practice of using 12b–1 fees as a substitute for a sales load was a departure from the rule as envisioned in 1980.[108]

To further explore the available options for reforming the rule, we held a roundtable on rule 12b–1 on June 19, 2007, to solicit the views of investor advocates, fund industry representatives, independent directors, current and former regulators, representatives from broker-dealers and other intermediaries who sell fund shares, and interested observers.[109] The participants responded to Commissioners' questions regarding the costs and benefits of 12b–1 plans, the role of 12b–1 plans in current fund distribution practices, and options for reform. The roundtable discussions and the nearly 1,500 comment letters we

brokerage account." Robert C. Pozen, The Mutual Fund Business (2d Ed., 2002), at 304. The primary benefit of this "one-stop shopping venue" is simplicity: An investor can buy funds from different fund families and receive all of their statements in a single report. Discount brokers allow investors to trade securities at a lower commission rate but provide less individualized service.

[97] *See* 2010 ICI Fact Book, *supra* note 6, at 76.

[98] *See generally* Carol Gehl, *et al.,* Mutual Fund Regulation § 18:6.1 (May 2008); Fee Trends Report, *supra* note 22, at 6 (noting that although in the 1980s and 1990s sales loads were a primary means of compensating brokers for services provided to investors, in recent years brokers have increasingly been compensated through "asset-based" fees).

[99] *See* 2010 ICI Fact Book, *supra* note 6, at 73.

[100] NASD Conduct Rule 2830(d)(5). The NASD rule defines "service fees" as "payments by [a fund] for personal service and/or the maintenance of shareholder accounts." NASD Conduct Rule 2830(b)(9). These services could include responding to customer inquiries, providing information on investments, and reviewing customer holdings on a regular basis, but would not include sub-transfer agency services, sub-accounting services, or administrative services. *See* NASD Sales Charge Rule Q&A, *supra* note 73, at Question #17. The NASD rule does not address whether "service fees" are required to be included in 12b–1 plans. *Id.* at Question #25. However, we understand that funds continue to include "service fees" as distribution expenses under rule 12b–1, presumably because the stream of payments (often called "trail commissions") may act as an inducement to intermediaries' sales personnel to sell fund shares and, arguably, because fund intermediaries would provide these services in the ordinary course of business regardless of whether they receive compensation from the fund (which may be just one of many other investments held by the intermediary's clients).

[101] According to the ICI, approximately 40 percent of 12b–1 fees are used for this purpose. *See* 2010 ICI Fact Book, *supra* note 6, at 73.

[102] *See infra* note 153. A representative of a large fund supermarket commented at our roundtable on rule 12b–1 that some fund advisers also pay supermarket fees through revenue sharing arrangements. *See* Roundtable Transcript, *infra* note 109, at 84–87 (John Morris, Charles Schwab & Co.). *See also supra* note 65; *infra* paragraph following note 286 (requesting comment whether investors in omnibus accounts receive equivalent levels of service relative to investors in retail accounts with similar 12b–1 fees).

[103] *See* NASD Conduct Rule 2830(d)(4). Discount brokers and fund supermarkets typically hold one account with the fund in the name of the broker, and then provide sub-accounting for individual shareholder holdings of fund shares. *See* Mutual Fund Redemption Fees, Investment Company Act Release No. 26782 (Mar. 11, 2005) [70 FR 13328 (Mar. 18, 2005)] at text following n.10 ("Rule 22c–2 Adopting Release").

[104] *See* Comment Letter of Charles P. Nelson (June 19, 2007). Employers sponsoring defined contribution plans typically hire third-party administrators to advise them in selecting the investment options offered to employees, perform recordkeeping and administrative functions (*e.g.,* producing account statements and recording transactions), provide educational materials and seminars, and maintain call centers and Internet Web sites for use by plan participants. *See* ICI, *Mutual Fund Distribution Channels and Distribution Costs, supra* note 83.

[105] *See* 2010 ICI Fact Book, *supra* note 6, at 73.

[106] Prohibition on the Use of Brokerage Commissions to Finance Distribution, Investment Company Act Release No. 26591 (Sept. 2, 2004) [69 FR 54728 (Sept. 9, 2004)] ("2004 Rule 12b–1 Amendments Adopting Release"). Although fund advisers may choose which brokers will execute the fund's transactions when buying and selling portfolio securities, fund brokerage is an asset of the fund. We prohibited the practice of using brokerage to reward sales of fund shares because it produces powerful incentives for advisers, is potentially harmful to fund investors, and "reliance on fund directors to police the use of fund brokerage to promote the sale of fund sales is not sufficient." *Id.* at text following n.16.

[107] *See* Prohibition on the Use of Brokerage Commissions to Finance Distribution, Investment Company Act Release No. 26356 at section IV (Feb. 24, 2004) [69 FR 9726 (Mar. 1, 2004)] ("2004 Rule 12b–1 Amendments Proposing Release"). Comments are available in File No. S7–09–04, at *http://www.sec.gov/rules/proposed/s70904.shtml.*

[108] *Id. See also* John A. Haslem, *Investor Learning and Mutual Fund Advertising and Distribution Fees,* J. Investing 53 (Winter 2009) ("Haslem") (noting "the transformation of 12b–1 fees from their original primary use for advertising and promotion" and concluding that "Rule 12b–1 fees are now used primarily to reward brokers for sales of adviser mutual fund shares").

[109] *See http://www.sec.gov/spotlight/rule12b-1.htm* (which provides links to various materials relating to the rule 12b–1 roundtable). An unofficial transcript of the June 19, 2007 Rule 12b–1 Roundtable is available at *http://www.sec.gov/news/openmeetings/2007/12b1transcript-061907.pdf* ("Roundtable Transcript").

received on the topic greatly informed our understanding of the operation of rule 12b–1 and the role it plays in the distribution of mutual funds today.

Many of the panelists and commenters representing fund management companies and intermediaries contended that the rule had benefited both funds and investors in substantial ways, and that the central problem lay with the rule's outdated requirements.[110] Some of these commenters asserted that rule 12b–1 provides a cost-efficient way of paying for services that investors want and need (*i.e.,* by "mutualizing" them), including ongoing services from financial professionals and access to funds through fund supermarkets and retirement platforms.[111] Several participants thought that investors preferred paying rule 12b–1 fees to paying front-end loads, and equated a decision to invest in a class of shares with a 12b–1 fee with a decision to pay a sales load over time.[112] They asserted that rule 12b–1 fees were, at least in part, responsible for bringing down the overall cost of investing in funds.[113]

Many of these panelists emphasized the importance of 12b–1 fees to pay for services that matter to investors.[114] They noted that platforms such as supermarkets and retirement plans use 12b–1 fees to support their service infrastructures, including interactive Web sites, investment allocation tools, and other educational materials that are currently made available to, and benefit, fund investors in those channels.[115] Several roundtable participants and commenters also noted that 12b–1 fees paid to platforms have enabled small funds and no-load funds to compete successfully for a broader segment of the investing population in many distribution channels, which is critical to their distribution strategies.[116] This development, they contended, has been beneficial because it increases competition and helps spur innovation.[117]

Other panelists were not as sanguine about rule 12b–1. They argued that even though 12b–1 fees may pay for worthwhile services to investors, the costs of those services are obscured in the fund's expense ratio in a way that makes the costs less transparent and the services less likely to be priced competitively.[118] They questioned the necessity of having these types of distribution charges embedded as a fund expense. In addition, they questioned whether investors are aware of and making informed choices about the services they pay for through the 12b–1 fee, which many panelists agreed lacks the prominence of a front-end load.[119] Most commenters believed that better disclosure and more effective communication of 12b–1 fees, and the manner in which they are used, would be useful to investors.[120]

One panelist argued that 12b–1 fees have the effect of increasing expense ratios and decreasing investment returns for investors.[121] Some suggested that the Commission encourage (or require) that fees to compensate distributors be paid by investors as an account charge (through "demutualization" or "externalization").[122] They argued that externalizing these "bundled costs" would make them more visible to shareholders and that unbundling costs and services promotes more efficient pricing of those services.[123] Representatives of fund management companies and others countered that such a fee structure already exists in the form of a mutual fund "wrap" account and other types of fee-based service arrangements that charge fees comparable to the maximum 100 basis point 12b–1 fee. They argued that it is more cost-effective and tax-efficient for funds to collect 12b–1 fees and credit the intermediaries, than it is for the intermediaries to charge their clients directly through wrap accounts.[124] As discussed above, although more investors today invest in no-load funds and share classes, this trend does not reflect the decreasing use of intermediaries, but rather the growing use of wrap accounts and other arrangements between intermediaries and investors that entail separate fees.[125]

Several participants suggested that the term "12b–1 fee" causes confusion because it encompasses so many different activities.[126] Most roundtable participants agreed that greater transparency and better communication of what 12b–1 fees are and how they are used are vital to enabling investors to make optimal choices among the alternatives offered to them.[127] Some panelists were troubled that, according to academic studies, many investors do

[110] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 172 (Michael Sharp, Citi Global Wealth Management); Comment Letter of the Independent Directors Council (July 19, 2007) ("IDC supports retaining the framework of Rule 12b–1 and believes that changes to the rule should take the form of enhancements and clarifications to adapt the rule to the modern world of fund distribution.").

[111] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 111–113 (Paul Haaga, Capital Research Management).

[112] *See, e.g., id.* at 64 (Martin Byrne, Merrill Lynch).

[113] *See, e.g., id.* at 171 (Michael Sharp, Citi Global Wealth Management).

[114] *See, e.g., id.* at 118–19 (Joseph Russo, Advantage Financial Group); *id.* at 180 (Barbara Roper, Consumer Federation of America). Commenters also emphasized the importance of 12b–1 fees for investor servicing. *See, e.g.,* Comment Letter of the National Association of Insurance and Financial Advisors (July 13, 2007); Comment Letter of the ICI (July 19, 2007).

[115] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 218 (Don Phillips, Morningstar).

[116] *See, e.g., id.* at 67 (Mellody Hobson, Ariel Capital Management) ("We could not exist without the 12b–1 fee to grow the funds.").

[117] *See, e.g.,* Comment Letter of the ICI (July 19, 2007); Comment Letter of the Securities Industry and Financial Markets Association (July 19, 2007).

[118] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 181 (Barbara Roper, Consumer Federation of America) and 185 (Richard Phillips, K&L Gates). *See also* Comment Letter of Bridgeway Funds, Inc. and Bridgeway Capital Management, Inc. (July 19, 2007); Comment Letter of Andrew Reyburn (July 20, 2007).

[119] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 121 (Brad Barber, Univ. of Cal., Davis) ("And I think what you hear from the industry—and the message I hear over and over again—is that investors do not like front-end loads. There is a simple psychological reason for that. It's an in-your-face fee. When you pay a load fee, it comes immediately out and off the top. Whereas, if you pay a spread fee over time, it's less obvious and less salient."). *See also* Comment Letter of Michael R. Clancy (June 13, 2007) ("Very few if any clients actually understand the [12b–1] fee, or even know that they are paying it. Of the few who actually understand a front-end load, the overwhelming majority of those clients don't know that there is an ongoing fee as well.").

[120] *See, e.g.,* Comment Letter of National Association of Personal Financial Advisors (July 17, 2007); Comment Letter of Donald H. Pratt (July 19, 2007); Comment Letter of the ICI (July 19, 2007).

[121] *See* Roundtable Transcript, *supra* note 109, at 119–120 (Shannon Zimmerman, Motley Fool).

[122] *See, e.g., id.* at 103 (Thomas Selman, FINRA). *See also* Comment Letter of Michael R. Clancy (June 13, 2007); Comment Letter of Neil J. McCarthy, Jr. (June 19, 2007); Comment Letter of Michael Murray (June 21, 2007).

[123] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 132 (Shannon Zimmerman, Motley Fool); 204–07 (Richard M. Phillips, K&L Gates). *See also* Comment Letter of Bridgeway Funds, Inc. and Bridgeway Capital Management, Inc. (July 19, 2007) ("Mutualization of [12b–1] fees inhibits an investor from having the necessary information on price vs. value to make economic choices across service providers. This distorts fundamental, free-market economics and restricts valuable competition in the intermediary channel.").

[124] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 170–72 (Michael Sharp, Citi Global Wealth Management). *See also* Comment Letter of the ICI (July 19, 2007) ("There are significant tax and operational disadvantages to imposing 12b–1 fees at the account-level that likely would outweigh the benefits of this approach.").

[125] *See supra* text accompanying notes 97 and 98.

[126] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 58 (Paul Haaga, Capital Research Management). *See also* Comment Letter of the Independent Directors Council (July 19, 2007) ("IDC recognizes that one term may not be sufficient given the wide variety of usage of 12b–1 fees * * *.").

[127] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 141–54 (multiple commenters). *See also* Comment Letter of the ICI (July 19, 2007) ("Many commentators * * * questioned the extent to which investors are aware of the nature and purpose of 12b–1 fees and suggested that disclosure of the fees and other distribution related costs can and should be improved. We agree.").

not appear to have a strong understanding of fund fees and expenses or their impact on investment returns. In particular, some participants were concerned that, because 12b–1 fees are paid automatically in small increments over time, they are much less obvious to investors than front-end sales loads.[128] Unlike traditional loads, 12b–1 fees are deducted from fund assets, and are reflected in lower investment returns, rather than deducted directly from shareholder accounts.[129] As a result, they may not be fully appreciated as a sales charge.[130] In addition, the expanding number of share classes and the overall complexity of fund load structures can further overwhelm and confuse investors.[131]

Many roundtable participants and commenters agreed that rule 12b–1 would benefit from revision, but they differed on the best course for going forward. Many participants and commenters suggested that the Commission merely revise the factors for board consideration, or refashion the role of the board in overseeing 12b–1 fees, to better reflect the economic realities of fund distribution in today's market.[132] Others recommended that the Commission improve disclosure of 12b–1 fees by changing the name of the fees or, more significantly, by requiring individualized account statement disclosure of the amount of 12b–1 fees actually paid by individual shareholders.[133] Some suggested, as discussed above, that 12b–1 fees should be "externalized," that is, deducted directly from shareholder accounts rather than fund assets.[134] Finally, some commenters argued that rule 12b–1 has outlived its original purpose, and should be substantially revised or repealed.[135]

Roundtable participants generally agreed that 12b–1 fees currently are used to an extent and in ways that are different than originally envisioned.[136] This has caused a "disconnect" to develop between the requirements of the rule and its application. For example, roundtable participants were in general agreement that the nine "factors" that the Commission provided as guidance to the board are no longer as relevant to the current uses of 12b–1 fees. They stated that the ensuing legal uncertainties have made it more difficult for directors to perform their duties and make their required findings under the rule.[137] They also said that, although directors complete the required analysis, they tend to view 12b–1 fees as a necessity—either to recoup outlays already made or to pay intermediaries at a rate already decided by the intermediary or the marketplace—to the point that 12b–1 plans tend always to be continued from year to year.[138]

Fund directors also observed that, in many instances, they and their funds lack the bargaining power to effectively negotiate the level of fees that are paid to financial intermediaries through 12b–1 plans and other sources.[139] This is particularly true in the case of fund supermarkets, where the sponsor may charge all participating funds according to the same rate schedule. These and other statements made at the roundtable and in the comment letters suggest that one of the fundamental premises of rule 12b–1—that independent directors would play an active part in setting distribution fees—does not reflect the current economic realities of fund distribution and the role 12b–1 fees play in it.

III. Discussion

We have carefully considered these and other views that emerged from the roundtable discussion and the many comment letters we subsequently received. Many of the letters highlighted issues that have arisen with the current operation of the rule.[140] We heard

[128] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 121–22 (Brad Barber, Univ. of Cal., Davis).

[129] One panelist remarked that the spread load exists because "it provided a distribution channel for brokers, one that was an alternative and has many positive characteristics, but also makes the costs quite non-transparent. And I don't think that is a coincidence. The growth and use of these funds, at a time when there was a lot of press around no-load funds, I think there was a reason brokers wanted to receive their compensation for the services they provided in a way that did not allow investors to easily put a price tag on those services." *Id.* at 180–81 (Barbara Roper, Consumer Federation of America). *See also* Comment Letter of the National Association of Personal Financial Advisors (July 17, 2007) ("We believe that individual investors are confused about the purpose of 12b–1 fees and their impact upon their own returns.").

[130] *See* General Accounting Office ("GAO"), Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition 75 (June 2000) (observing that investors are more aware of sales loads than operating expense fees, and are increasingly resistant to paying the higher front-end loads). *See also* Todd Houge and Jay Wellman, *The Use and Abuse of Mutual Fund Expenses* (Jan. 31, 2006) (academic working paper) (*http://papers.ssrn.com/sol3/papers.cfm?abstract_id=880463*) ("While mutual fund investors are often aware of up-front charges like sales loads, research shows they are often less cognizant of annual operating expenses, even though both types of fees are deadweight costs.").

[131] *See, e.g.,* Comment Letter of Mark Freeland (June 19, 2007) ("The complexity of pricing structures makes it more difficult for the small investor to compare prices and services of different advisers."). One commenter expressed concern that the proliferation of share classes may increase costs to funds and thereby hinder shareholder returns. *See* Comment Letter of Bridgeway Funds, Inc. and Bridgeway Capital Management, Inc. (July 19, 2007) ("[T]his increase in share classes increases the fund's cost of accounting, filings, shareholder servicing (*e.g.,* prospectus review, drafting, printing, mailing), blue sky registration, transfer agency, board review, etc. These costs are a drain to shareholder returns.").

[132] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 50–51 (Joel Goldberg, Willkie Farr & Gallagher) and 201–02 (Mark Fetting, Legg Mason, Inc.).

[133] *See, e.g., id.* at 222–23 (Avi Nachmany, Strategic Insight) and 154 (John A. Hill, Putnam Funds); Comment Letter of Access Data Corp. (July 19, 2007) (account-level disclosure of 12b–1 fees is not cost-prohibitive, and would "ensure that shareholders have full disclosure and fee transparency so that they can make an informed decision related to the fees they pay versus the services they receive."). *See also* GAO, Mutual Funds: Greater transparency needed in disclosures to investors at 54 (GAO–03–763) (June 9, 2003) (providing investors with specific dollar amounts of expenses paid or placing fee-related disclosure in quarterly account statements could increase fee transparency). *But see* Comment Letter of W. Hardy Callcott (June 18, 2007) (individualized disclosure of 12b–1 fees would entail significant costs and would not, standing alone, be meaningful to investors). We discuss the costs associated with rule 12b–1 and our proposed amendments in the Cost Benefit Analysis Section of this Release. *See infra* Section V.

[134] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 204–06 (Richard Phillips, K&L Gates); Comment Letter of CFA Institute (Aug. 9, 2004) (File No. S7–09–04) ("We also recommend that funds be required to deduct distribution-related costs directly from shareholder accounts as a separate line item, rather than from fund assets.").

[135] *See, e.g.,* Comment Letter of Bridgeway Funds, Inc. and Bridgeway Capital Management, Inc. (July 19, 2007); Comment Letter of Lauren Garland (June 2, 2007); Comment Letter of Andrew Gross (June 9, 2007); Comment Letter of Melvyn H. Mark (June 17, 2007); Comment Letter of Michael Murray (June 21, 2007). *See also* Comment Letter of JoNell Hermanson (July 9, 2007) (stating that variable insurance products should not be permitted to charge 12b–1 fees); Comment Letter of Steve Wiands (Aug. 6, 2007) (stating that funds closed to new investors should not be permitted to charge 12b–1 fees).

[136] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 192 (Richard Phillips, K&L Gates) and 194 (Mark Fetting, Legg Mason, Inc.).

[137] *See, e.g., id.* at 105 (Robert Uek, MFS Funds) and 158 (John Hill, Putnam Funds). One panelist did not view the factors as posing a significant obstacle to current distribution arrangements, however. *Id.* at 33–34 (Matthew Fink, Former President, ICI) ("The rule expressly says these factors are suggestions * * *. So the fact that you may be approving a plan that the purported or suggested factors don't fit, it's totally irrelevant.").

[138] *See, e.g., id.* at 140 (Jeffrey Keil, Keil Fiduciary Strategies).

[139] *Cf.* Comment Letter of the Independent Directors Council (July 19, 2007) ("We are not aware of any board that has failed to renew a 12b–1 plan (or is likely to do so) * * *.").

[140] *See supra* note 89. Of the nearly 1500 comment letters we received, over 1400 were sent by financial planners and registered broker-dealers who opposed substantive reform of rule 12b–1. Of these 1400 letters, almost 1000 were form letters. *See* Comment Letter Type A; Comment Letter Type B. We received approximately 25 letters from mutual funds, large broker-dealer firms, insurance companies, industry associations, and law firms. The majority of these letters also opposed significant rule reform, but expressed various levels of support for changing the name of the fee,

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arguments advocating substantial change in how investors pay distribution costs, most of which are, at their core, arguments for greater transparency. We also heard concerns that significant changes could disrupt arrangements that are today deeply embedded in mutual fund sales and distribution networks, including those that finance the operation of fund supermarkets, retirement plan platforms, and financial planning. These arguments supported the preservation of business models that were developed around an existing regulatory framework, but tended to discount some of the more troubling aspects of distribution arrangements that affect millions of American investors. We have evaluated all of these views in developing this proposal, which is designed, as discussed further below, to enhance transparency and fairness to the benefit of investors.

We do not believe that it would benefit fund investors to return to the era in which they paid a substantial front-end sales load and did not have access to various alternative forms of distribution payment arrangements. Denying investors the ability to select alternate distribution methods or to pay for distribution services over time is not a goal of this rulemaking. Thus, we are not proposing in this rulemaking to prohibit the use of fund assets to pay sales costs. We remain concerned, however, about the conflicts of interest that arise when fund assets are used for distribution, and that fund directors monitor those conflicts. We also do not believe that merely modifying the "factors" for director consideration in order to accommodate existing industry practices would sufficiently address the issues we have identified with the use of fund assets to pay for distribution under rule 12b–1.

Therefore, we are proposing a new approach to asset-based distribution fees (*i.e.,* 12b–1 fees) that is designed to benefit fund shareholders while minimizing disruption of current arrangements. Specifically, our proposal would explicitly recognize that a portion of asset-based distribution fees (*i.e.,* asset-based sales charges) functions like a sales load that is paid over time, and thus should be subject to the requirements and limitations that apply to traditional sales loads.[141] Limits on asset-based sales charges would be applied to the amounts paid by each investor (rather than amounts paid by the fund) in order to assure that each shareholder would pay only his or her proportionate share of distribution related costs. In addition, we propose to require funds to identify for shareholders that portion of asset-based distribution fees (today's 12b–1 fees) that operates as a substitute for a sales load and thus facilitate comparison with the distribution related costs of other funds or classes of shares. The proposed new rule and rule amendments would replace current rule 12b–1.

We describe the details of our proposals in the next sections of this Release. In Section III.M of this Release, we describe the anticipated impact of these proposals on investors, fund managers and directors, broker-dealers, and other intermediaries.

A. Summary of Our Proposals

The new approach we propose would, like NASD Conduct Rule 2830, differentiate between the two constituent parts of current 12b–1 fees (asset-based sales charges and service fees). Under proposed new rule 12b–2, funds could continue to use a limited amount of fund assets to pay for distribution related expenses.[142] The maximum amount of this "marketing and service fee" would be tied to the service fee limit imposed by the NASD sales charge rule (currently 25 basis points per year).[143] Unlike the service fee, however, funds could use this portion of fund assets for any distribution related expenses. This approach would serve the interests of investors and other members of the fund marketplace by providing a means of paying for participation in fund supermarkets and the maintenance of shareholder accounts, among other things, and allowing funds to support their own marketing and distribution strategies.

We also propose to permit funds to deduct from fund assets amounts in excess of the marketing and service fee, and we would treat these amounts as an alternative means to pay a front-end sales load. To accomplish this, we propose to amend rule 6c–10 (which permits funds to charge deferred loads) to permit this asset-based sales charge, which we would call an "ongoing sales charge." The proposed amendments in effect would treat ongoing sales charges as another form of sales load.

Our proposed amendment to rule 6c–10 would not require any special board findings (such as those required by rule 12b–1), a written plan, annual renewal, or automatic termination provisions, or impose fund governance requirements. Instead, we would apply limits on asset-based sales charges by referencing the front-end load imposed by the fund or, if none, by referencing the aggregate sales load cap imposed under the NASD sales charge rule for funds with an asset-based sales charge and service fee (currently 6.25 percent).[144]

These limits would be based on the cumulative amount of sales charges that an investor pays in any form (front-end, deferred, or asset-based). Under the proposed rule amendment, a fund imposing an ongoing sales charge would be required to automatically convert fund shares to a class of shares without an ongoing sales charge no later than when the investor has paid cumulative charges that approximate the amount the investor otherwise would have paid through a traditional front-end load (or, if none, the NASD rule 6.25 percent cap).[145] The proposed amendment would shift the focus of the limits from how much fund underwriters may collect in asset-based sales charges (a fund-level cap) to how much individual shareholders will pay either directly or indirectly (a shareholder account-level cap).

We are also proposing to amend rule 6c–10 to permit an alternative, elective distribution model. In this new model, intermediaries of funds could impose charges for sales of the fund's shares at negotiated rates, much like they charge commissions on sales of exchange-traded funds (ETFs)[146] and other equity securities. The proposed rule would permit fund intermediaries to charge sales loads other than those established by the fund underwriter and disclosed in the fund prospectus.

requiring additional disclosure, and revising the role of the fund board in approving the plan. We received approximately 10 letters from investors, most of whom supported substantive reform or repeal of the rule.

[141] We acknowledged this, at least implicitly, when we approved the NASD sales charge rule amendments in 1992. We observed that the "purpose of the revised maximum sales charge rule is to create 'approximate economic equivalency' as to the maximum sales charges for different types of mutual funds." *See* 1992 NASD Rule Release, *supra* note 66, at section V. The Commission believed the amendments would, among other things, promote fairness by assuring "some degree of parity" between the sales and sales-promotion expenses charged by traditional load classes and classes that assess 12b–1 fees. *Id.*

[142] Proposed rule 12b–2(b).

[143] Proposed rule 12b–2(b)(1); NASD Conduct Rule 2830(d)(5).

[144] NASD Conduct Rule 2830(d)(2)(A).

[145] *See infra* note 171 and accompanying text.

[146] ETFs are registered investment companies that offer public investors an undivided interest in a pool of securities. They are similar in many ways to traditional mutual funds, except that shares in an ETF can be bought and sold throughout the day through a broker-dealer, like stocks traded on an exchange.

B. Rescission of Rule 12b–1

We propose, first, to rescind rule 12b–1 in its entirety.[147] As we discussed in detail above, rule 12b–1 was adopted in response to a set of problems identified by the Commission in the late 1970s. But many of the assumptions underlying the rule appear to no longer reflect current marketplace realities, including the role that 12b–1 fees play in the distribution of fund shares and the tasks that directors should be required to undertake in considering whether to approve 12b-1 fees. Moreover, the rule has confounded many investors who remain unsure what a "12b–1 fee" is, how it impacts their account, and whether they should be willing to invest in a fund that imposes such a fee. Finally, the application of rule 12b–1 today reflects the confusion that has accumulated over the years as lawyers have sought to provide answers to questions that have arisen in the course of the rule's evolution.

Therefore, we have decided not to propose to amend existing rule 12b–1, but to propose a new regulatory framework to address how fund assets may be used to finance distribution costs.[148] We believe the proposed rules, as described in more detail below, would better address current investor protection concerns raised by the use of fund assets as alternatives to sales loads and as a means of financing other types of distribution costs.

We note that Regulation R under the Exchange Act,[149] which provides banks exceptions and exemptions from broker-dealer registration, specifically references fees that banks and their employees receive pursuant to plans under rule 12b–1.[150]

• We have not intended that the proposed rule affect those exceptions and exemptions, and we request comment on whether further rulemaking, clarification, or interpretive guidance is necessary or appropriate in this regard.

C. Proposed Rule 12b–2: The Marketing and Service Fee

We propose a new rule 12b–2, which would permit funds, with respect to any class of fund shares, to deduct a fee of up to the NASD service fee limit (which is 25 basis points or 0.25 percent annually) from fund assets to pay for distribution activities, without being subject to the limitations on sales loads that we describe in the next section of this Release.[151] Although the fee could be used for any type of distribution cost, we anticipate it primarily would be used to pay for servicing fees of the type currently permitted by the NASD sales charge rule,[152] trail commissions to broker-dealers selling fund shares, and other expenses, such as fees paid to fund supermarkets, that may in part be distribution related.[153] This proposed rule would permit funds to bear expenses similar to those that fund boards generally approved shortly after our adoption of rule 12b–1 in 1980.[154]

Unlike rule 12b–1, rule 12b–2 would not require directors to adopt or renew a "plan" or make any special findings.[155] Rather, fund boards would have the ability to authorize the use of fund assets to finance distribution activities consistent with the limits of the rule and their fiduciary obligations to the fund and fund shareholders.[156] A plan would not be required under our proposal because the proposed rules and rule amendments are structured to impose limits and safeguards on the use of fund assets for distribution, without the need for board approval of a plan. We intend that the board (including the independent directors) would oversee the amount and uses of these fees in the same manner that it oversees the use of fund assets to pay any other fund operating expenses, particularly those that create a potential conflict of interest for the fund's investment adviser or other affiliated persons.[157] The rule

[147] As discussed in more detail in Section III.N of this Release, we are proposing a grandfathering provision that would permit funds to deduct existing 12b–1 fees with respect to shares issued prior to the compliance date for the proposed new rule and rule amendments, which we anticipate would be at least 18 months from the effective date in the adopting release.

[148] Although we propose to rescind rule 12b–1, proposed rule 12b–2 retains the section in rule 12b–1 that restricts certain directed brokerage practices. *See* 2004 Rule 12b–1 Amendments Adopting Release, *supra* note 106. We believe that the concerns we discussed in that adopting release regarding using directed brokerage to finance the distribution of fund shares continue to apply under our new proposal, and we propose to retain the section we adopted in 2004 unchanged. *See* proposed rule 12b–2(c).

[149] 17 CFR Part 247.

[150] 17 CFR 247.721(a)(4)(iii)(A), 247.760(c).

[151] Proposed rule 12b–2(b).

[152] *See* NASD Sales Charge Rule Q&A, *supra* note 73, at question 17 (explaining the types of activities for which services fees may be used).

[153] As discussed above, we have previously stated that funds may pay for non-distribution expenses under rule 12b–1 plans. *See supra* note 43 and accompanying text. Fund expenditures under current 12b–1 plans often pay for a mixture of distribution and administrative services. For example, some funds may pay their entire fund supermarket fee under a rule 12b–1 plan, even though portions of the fee may pay for administrative services that are not distribution related. A fund need not determine which portion of the fee is primarily for distribution services or which portion is primarily for administrative services, and it may be impractical and burdensome to require funds to allocate expenses. *See* Martin G. Byrne, *The Payment of Fund Supermarket Fees By Investment Companies,* 3 Investment Law. 2 (1996) ("[B]ecause the services that are provided to a fund in a supermarket are a combination of distribution, subaccounting, administrative, account maintenance, and other shareholder services, some portion of [a supermarket fee] may be considered a payment 'primarily intended' to result in sales of a fund's shares pursuant to Rule 12b–1 .* * * Because a fund with a Rule 12b–1 plan is expressly permitted to pay for distribution services, it is not critical to determine whether a particular service it pays for in connection with [a supermarket fee] is or is not for distribution."). Similarly, proposed rule 12b–2 would not preclude funds from paying for these types of mixed expenses under rule 12b–2. However, to the extent that funds need not rely on proposed rule 12b–2 to charge expenses that can clearly be identified as not distribution related (*e.g.,* sub-transfer agency fees), funds could instead characterize those expenses as administrative expenses and thus keep total asset-based distribution fees within the 25 basis point limit of the marketing and service fee. *See* 1988 Release, *supra* note 28, at n.126 ("[T]o the extent a fund is paying for legitimate non-distribution services, such payments need not be made under a 12b–1 plan, even if the recipient of the payments is also involved in the distribution of fund shares."). *See also supra* Section III.C of this Release. Conversely, simply characterizing an activity as "administrative" would not permit a fund to pay for it entirely outside of proposed rule 12b–2 if all or a portion of the fee is distribution related. *See, e.g.,* In the Matter of BISYS Fund Services, Inc., Investment Company Act Release No. 27500 (Sept. 26, 2006) (Commission order instituting settled administrative and cease-and-desist proceedings arising out of the improper use of fund assets for marketing and other expenses).

[154] *See supra* note 55.

[155] Some funds and fund boards have adopted so-called "defensive" rule 12b–1 plans that do not impose distribution fees on the fund, but are designed to ensure that the board and the fund do not violate the Act if fund expenditures are subsequently determined to be primarily intended to result in the sale of fund shares. *See* ICI, *Report of the Working Group on Rule 12b–1* at n.71 (May 2007) (*http://www.ici.org/pdf/rpt_07_12b-1.pdf*). Although 12b–1 plans (including "defensive" ones) would no longer be required to be entered into under our proposed amendments, the exemption provided by rule 12b–2 could serve the same purpose as a defensive plan to the extent that the amount of assets permitted to be used for distribution under rule 12b–2 has not otherwise been fully utilized.

[156] Section 36(a) of the Act "establish[es] a federal standard of fiduciary duty" in dealings between a mutual fund and certain other persons, including its adviser, principal underwriter, officers and directors, among others. *See Tannenbaum* v. *Zeller,* 552 F.2d 402, 416 (2d Cir.), *cert. denied,* 434 U.S. 934 (1977). Section 36(a) applies to acts or practices constituting a breach of fiduciary duty involving "personal misconduct" on the part of the person acting for or serving the fund in the enumerated capacities. This federal standard is at least as stringent as standards of care prescribed for fiduciaries under common law, such as the duty of care and the duty of loyalty. *See id.* at n.20. *See also* Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices, Investment Company Act Release No. 28345 (July 30, 2008) [73 FR 45646 (Aug. 6, 2008)] at section titled "Summary of Law Regarding Fiduciary Responsibilities of Investment Company Directors" (discussing state and federal law fiduciary obligations of fund directors).

[157] Congress intended that independent directors play a critical role in overseeing fund operations

Continued

would recognize that funds bear ongoing expenses that, although they are distribution related, may benefit the fund and existing fund shareholders in a variety of ways. The marketing and service fee would be specifically identified and fully disclosed in the fund prospectus fee table as a type of operating expense.[158]

Funds may use the proceeds of the marketing and service fee to pay for, for example, the ongoing cost of participation on a distribution platform such as a fund supermarket, giving investors a convenient way of buying shares; for paying trail commissions to broker-dealers in recognition of the ongoing services they provide to fund investors; or for paying retirement plan administrators for the services they provide participants (and which relieve the fund from providing such services). In addition, funds (including no-load funds) may use the marketing and service fee to pay for shareholder call centers, compensation of underwriters, advertising, printing and mailing of prospectuses to other than current (*i.e.,* prospective) shareholders, and other traditional distribution activities.[159]

Under the proposed rule, the marketing and service fee could not, on an annual basis, exceed the limits on service fees prescribed by the NASD sales charge rule (currently 0.25 percent of fund net assets annually). Any charge in excess of 0.25 percent per year would be considered an asset-based sales charge and subject to the overall sales load limitations established by the NASD sales charge rule and other requirements, as discussed in the next section of this Release. We chose to propose this limit because it would permit, without change, the continuation of many important uses of 12b–1 fees that may benefit investors. It also represents the line the NASD sales charge rule draws between a limited distribution fee and a sales charge—25 basis points currently is the limit that a fund may deduct and still call itself a "no-load" fund.[160] The NASD drew upon its knowledge and expertise as the self-regulatory organization of the brokerage industry to develop these limits, which we approved as an appropriate exercise of the NASD's congressional mandate to prevent excessive sales charges on mutual fund shares.[161] Accordingly, we have used the NASD limit on service fees in formulating our proposal to distinguish a limited distribution fee from a sales charge.

We request comment on the proposal to limit the marketing and service fee to the maximum service fee permitted under the NASD sales charge rule.

- Would a different term, such as "sales/service fee," be more appropriate? If so, why? Would a different limit be more appropriate? Should the limit be higher (*e.g.,* 30 or 50 basis points) or lower (*e.g.,* 10 or 20 basis points)? If so, why? Should the limit be set with reference to the NASD rule, which would allow the NASD (now FINRA) to change the level, pending approval by the Commission?

We understand that many share classes either do not currently charge 12b–1 fees in an amount that exceeds 25 basis points, or charge none at all.[162] Many funds use these fees to compensate intermediaries for providing customers with follow-up information and account maintenance services pursuant to the NASD sales charge rule. In such cases, the shareholder service fees may in fact have a significant distribution component, which is why funds often pay them pursuant to a rule 12b–1 plan.[163] We do not propose, however, to limit the use of the marketing and service fee to these types of services (*i.e.,* those described in the NASD sales charge rule), so that funds may continue to use fund assets to pay for promotional and advertising expenses.

- Should we limit the marketing and service fee to expenses incurred for "shareholder services" as defined in the NASD sales charge rule? More generally, do investors in omnibus accounts receive equivalent levels of service relative to investors who invest directly and pay similar 12b–1 fees? Is there a disparity in service, and if so, why? What implications does this have for our proposal?

Under the proposal, "distribution activity" would be defined as "any activity that is primarily intended to result in the sale of shares issued by the fund, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature."[164] The proposed rule does not attempt to delineate permissible distribution expenses because our experience with rule 12b–1 has shown that new distribution methods continually evolve.

- Are the identified activities appropriately considered "distribution activities"? Should we provide more guidance regarding specific expenditures that are distribution expenses and others that are not, as some commenters have suggested?[165] Should we define "distribution activity" differently? If so, how should we define it? Should funds be permitted to classify only certain expenses as marketing and service fees?[166] If so, what types of expenses?

and protecting the interests of shareholders in view of the substantial conflicts of interest that exist between a fund and its investment adviser. *See House Hearings, supra* note 26, at 109; *Burks* v. *Lasker,* 441 U.S. 471 (1979). When possible conflicts are present, fund management is under a duty to fully and effectively disclose information sufficient for the independent directors to exercise informed discretion on the matters put before them. *See, e.g., Tannenbaum,* 522 F.2d at 417, citing *Fogel* v. *Chestnutt,* 533 F.2d 731, 745 (2d Cir. 1975), *cert. denied,* 429 U.S. 824 (1976) and *Moses* v. *Burgin,* 445 F.2d 369 (1st Cir.), *cert. denied,* 404 U.S. 994 (1971).

[158] We are proposing amendments to the prospectus fee table, which are discussed in Section III.J of this Release, *infra.* We are also proposing to require funds imposing a new marketing and service fee, or increasing the rate of an existing 12b–1 fee that would be used as a marketing and service fee, to obtain the approval of their shareholders. This requirement is discussed in Section III.F of this Release, *infra.*

[159] *See* proposed rule 12b–2(b), (e).

[160] Specifically, NASD Conduct Rule 2830(d)(4) prohibits any member from describing a fund as "no-load" if the fund has combined asset-based sales charges and services fees of more than 0.25 percent of average annual net assets. This provision is intended to help investors distinguish between funds that use relatively small 12b–1 fees to finance advertising and other sales promotion activities, similar to traditional no-load funds, and funds that use larger 12b–1 fees as alternatives to front-end sales loads. *See* 1992 NASD Rule Release, *supra* note 66. *See also* The Vanguard Group, *supra* note 31 (order permitting the Vanguard Group to call its funds no-load even though they made small distribution payments of 0.20% of average annual net assets).

[161] *See* 1992 NASD Rule Release, *supra* note 66, at section V; 15 U.S.C. 80a–22(b).

[162] *See infra* Section III.M.2 of this Release.

[163] *See* SEC, Mutual Fund Fees and Expenses (2007) (*http://www.sec.gov/answers/mffees.htm*). Funds may decide that the stream of payments to a broker-dealer for providing client services (that it would have provided anyway) could be viewed as an incentive for the broker-dealer to continue selling the fund.

[164] Proposed rule 12b–2(e)(2). The proposed definition of "distribution activity" is identical to the description of distribution in rule 12b–1. *See* rule 12b–1(a)(2). Because funds continually market themselves to investors, many types of activities may potentially be construed as "primarily intended" to result in fund sales. Although the definition provides flexibility, similar to rule 12b–1, distribution activities paid for through asset-based distribution fees under proposed rule 12b–2 and the proposed amendment to rule 6c–10 (as under rule 12b–1) must represent legitimate expenses of the fund. *See, e.g.,* Exemptions for Certain Registered Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 16619 at n. 3 (Nov. 2, 1988) [53 FR 45275 (Nov. 9, 1988)].

[165] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 167 (Jeffrey Keil, Keil Fiduciary Strategies) ("[D]istribution expenditures should be defined in some way, shape, or form, or [the rule should] say what's not a distribution expenditure.").

[166] *See, e.g.,* 2004 Rule 12b–1 Amendments Adopting Release, *supra* note 106.

D. Proposed Amendments to Rule 6c–10: The Ongoing Sales Charge

The proposed amendments to rule 6c–10 would permit funds to deduct asset-based distribution fees in excess of the amount permitted under rule 12b–2 (*i.e.,* 25 basis points annually), provided that the excess amount is considered an "ongoing sales charge" subject to the sales charge restrictions described below, including an automatic conversion feature.[167] Funds would not have to adopt a "plan" in order to impose an ongoing sales charge, and fund boards would not be required to make any special findings. In short, the proposed rule would treat ongoing sales charges as another form of deferred sales load.[168]

Under the proposed provision, a fund could deduct an ongoing sales charge to finance distribution activities at a rate established by the fund, provided that the cumulative amount of sales charges the investor pays on any purchase of fund shares does not exceed the amount of the highest front-end load that the investor would have paid had the investor invested in another class of shares of the same fund.[169] For example, if a fund has class A shares with a six percent front-end sales load, the fund could pay as much as six percent in total ongoing sales charges in class B shares. If another class of shares charges a front-end sales load of, for example, two percent, a total ongoing sales charge of as much as four percent could also be charged (six percent minus the two percent front-end load) with respect to that class.

We seek comment on whether the Commission should treat ongoing sales charges as a form of deferred sales load subject to the NASD sales charge limitations. We also seek comment on whether the proposed amendments to rule 6c–10, as described in more detail below, accomplish this goal.

• Do the sales charge limitations, as we propose to apply them, adequately protect investors from excessive sales loads in accordance with the objectives of section 22(b) of the Act? Would any aspect of these proposed sales charge limitations encourage broker-dealers to recommend "switching" between fund families once an investor has reached the ongoing sale charge limits? If so, does this proposal raise any issues (that do not already exist with regard to other classes) that would encourage such switching, in light of current NASD sales charge limits? What effect could the proposed rule have on the various types of share classes currently offered by funds? For example, would funds or distributors reduce, eliminate, or increase the offering of share classes with asset-based sales charges? To the extent that broker-dealers rely on ongoing sales charges as compensation for ongoing services to investors, could the quantity or quality of the services provided change if the rule results in limits on cumulative ongoing sales charges?

1. Automatic Conversion

Under the proposed amendments, funds or fund intermediaries would not be required to keep track of the actual dollar amount of ongoing sales charges paid by each individual shareholder account (although they may choose to do so) to avoid exceeding the rule's maximum sales charge limitation.[170] A fund could satisfy the maximum sales charge limitation by providing that the shares purchased would automatically convert to another class of shares without an ongoing sales charge no later than the end of the month during which the fund would have paid on behalf of the investor the maximum amount of permitted sales load based on the cumulative rates charged each year.[171] In addition, a fund could impose a CDSL in combination with an ongoing sales charge, but total sales charges could not exceed the maximum sales charge limitation.[172]

The maximum number of months a shareholder could remain invested in a class of shares paying an ongoing sales charge would depend both on the maximum sales load and the rate of the ongoing sales charge. Thus, for example, if the maximum sales load for the fund is three percent, the ongoing sales charge could be 50 basis points annually for six years. Alternatively, the fund could collect 25 basis points annually for 12 years, 75 basis points annually for four years, 150 basis points annually for two years, and so on.

We have designed the conversion provisions of the rule so that the maximum conversion date is easily determinable at the time the investor purchases fund shares (as is a front-end sales load).[173] As a result, the fund or intermediary would be able to provide this information to an investor or a prospective investor at the time he or she makes or is considering making an investment in the fund.[174] We propose monthly conversions because they reflect the current practices of many funds and fund transfer agents, which we anticipate would reduce costs associated with complying with the proposed rules.

• We request comment on alternatives, such as daily, weekly, or quarterly conversions.

[167] Proposed rule 6c–10(b). We would title this section of the rule "Fund-Level Sales Charge" to distinguish it from a current provision of rule 6c–10 that provides an exemption to permit funds to deduct a "Deferred Sales Load" (*e.g.,* CDSL) (rule 6c–10(a) from shareholder accounts, and a proposed alternative that would provide an exemption from section 22(d) of the Act to permit broker-dealers to deduct "Account-Level Sales Charges" (proposed rule 6c–10(c)).

[168] As a form of deferred sales load, all payments of ongoing sales charges to intermediaries would constitute transaction-based compensation. Intermediaries receiving those payments thus would need to register as broker-dealers under section 15 of the Exchange Act unless they can avail themselves of an exception or exemption from registration. Marketing and service fees paid to an intermediary may similarly require the intermediary to register under the Exchange Act.

[169] Proposed rule 6c–10(b)(1).

[170] We understand that many funds lack the ability to track dollar amounts of distribution expenses charged to purchases by individual investors.

[171] Proposed rule 6c–10(b)(1)(i) (providing that a fund may comply with the maximum sales charge limits by converting shares on or before the end of the conversion period); proposed rule 6c–10(d)(2) (defining "conversion period" as "the period beginning on the day that shares are purchased and ending on the last day of the calendar month during which the cumulative ongoing sales charge rates exceed the shareholder's maximum sales load rate"). The rule would permit conversion periods to be computed as of the end of the calendar month because that would conform to the way most funds presently compute conversion periods with respect to class B shares.

Thus, for example, the provision would operate as follows: Assume that a fund offers a class A share with a 6% front-end load and no ongoing sales charge. The same fund could also offer a class of C shares with an annual ongoing sales charge of 0.75%, provided that: (i) The class C shares convert to class A shares in 96 months or earlier ([6.0% ÷ 0.75%] × 12 = 96 months or 8 years); and (ii) the class C shares do not impose any other loads.

[172] Using the example in note 171, *supra,* a fund offering a class A share with a 6% front-end load could also offer a class B share that is subject to an annual ongoing sales charge of 0.75% with a declining CDSL. The maximum CDSL that the fund could charge on a purchase of class B shares would be 5.25% in the first year, 4.5% in the second year, 3.75% in the third year, and so on. At the end of the eighth year following the purchase, the fund would be required to convert the class B shares to a share class that does not charge an ongoing sales charge. Thus, regardless of when the shareholder redeems shares, the shareholder's total sales load rate would never exceed 6%, the maximum class A front-end load rate.

[173] Funds could sell shares subject to a shorter conversion period than the maximum conversion period as defined under the proposed rule. In addition, funds could offer scheduled variations in the conversion period to a particular class of shareholders or transactions if the fund has satisfied the conditions in rule 22d–1. Proposed rule 6c–10(b)(1)(iii). Nothing in the rule would prevent a fund from offering to existing shareholders a new scheduled variation that would reduce the conversion period. Proposed rule 6c–10(b)(2). These provisions are similar to provisions that currently apply to deferred sales loads under rule 6c–10, and which are included in proposed rule 6c–10(a). *See* proposed rule 6c–10(a)(1)(iii) and (a)(2).

[174] *See infra* Section III.D.1.b of this Release.

a. Differences From NASD Cap

Our proposed *shareholder account-level cap* would effectively replace the NASD *fund-level* cap on asset-based sales charges.[175] In proposing a fund-level cap in 1991, the NASD explained that it had considered a shareholder account-level cap but, at the time, it believed that an account-level cap would require individual shareholder accounting, and in light of the difficulties involved with individual shareholder accounting, concluded that an account-level cap was not feasible.[176] The NASD acknowledged, however, that while its' approach "protects a majority of shareholders," it also "may result in a minority of long-term shareholders paying more than the maximum sales charge." [177] To illustrate, a fund shareholder paying a five percent front-end load on an investment of $10,000 in a fund will pay a $500 sales load, but the same investor investing in a fund with a (not uncommon) 12b–1 fee of 100 basis points, over a period of 10 years, could pay more than $800 in distribution related sales charges (resulting from the 75 basis point asset-based sales charge component).[178] After 20 years, the difference becomes more significant: The shareholder would have paid $2,292 in asset-based sales charges compared with the $500 front-end load.

The NASD's Mutual Fund Task Force, in its report on mutual fund distribution issues, expressed similar concerns when it identified limitations on the length of B share conversion periods as a potential area for regulatory reform.[179] Our proposal would address both the fairness concerns raised by the NASD Task Force in 2005 and the operational concerns raised in 1991 by avoiding the need for individual shareholder accounting. We view our proposal in many respects as the further development of the NASD sales charge rule, which was intended to bring total 12b–1 fees into "approximate economic equivalency" with traditional loads, although this equivalency would not be exact, as a result of potential varying volume discounts between share classes and differing market returns.[180]

b. Implications on Fund Operations

Our proposed account-level cap would build upon innovations of fund management companies that have developed the operational capacity to issue, track the aging of, and convert class B shares. As a result, we expect that funds and intermediaries will be able to utilize existing transfer agency and other recordkeeping systems that administer funds issuing class B shares, which we believe operate in a manner similar to the proposed conversion provision or could be easily adjusted to do so.[181] In addition, we have sought to provide funds the flexibility to design different sales load structures that meet the needs of fund investors, funds, and their distribution systems. Accordingly, we do not propose to specify the annual maximum rate at which a fund could deduct annual ongoing sales charges.[182]

We request comment on the operational implications of the proposed automatic conversion.

- Can existing fund and intermediary systems be adapted so that conversion periods could be readily determined and implemented at the time of purchase? How easy or difficult would this adaptation be? How difficult would it be for funds that don't currently offer B shares to develop such systems? Is the flexibility we propose advantageous, or would a more standardized approach be more easily understood by, and in the interest of, investors? How would a more standardized approach work?

c. Implications on Transferability of Shareholder Accounts

The proposed automatic conversion feature, and its attendant requirement to track fund shares, may present additional issues when shareholder accounts are transferred between different intermediaries. We understand that, in some cases, tracking fund shares is a responsibility assumed by the fund transfer agent, in which case the portability of fund shares (*i.e.,* the ability of an investor to move his account from one intermediary to another) should not be affected. In other cases (*e.g.,* where the shares are held in omnibus accounts), fund intermediaries track share lots and would need to provide share lot histories to the new intermediary for the new intermediary to be able to determine the remaining maximum sales charge for transferred shares.[183] We understand that fund intermediaries today have the ability to transfer share lot histories in order to: (i) Service class B shares or classes with contingent deferred sales loads, and (ii) meet tax reporting requirements. Thus, we do not believe that our proposals would interfere with the ability of a shareholder to transfer shares from one intermediary to another.

We request comment on our assumptions in this area.

- Would the proposed rule's conversion requirement present any special problems when shares are transferred between customer accounts held at different intermediaries? Are there different implications with respect to different types of intermediaries and, if so, what are they? Is there any reason that some intermediaries would not be capable of transferring share lot history?[184] Are there other provisions that we should consider that would facilitate transferability?

2. The Maximum Load

a. The Reference Load

We propose that the maximum sales load that would apply to any purchase of shares in a fund class subject to an ongoing sales charge would be the highest front-end load of another class of that fund that does not charge an

[175] *See supra* Section II.C.1 of this Release.

[176] *See* NASD Notice of Proposed Rule Change, *supra* note 74, at section titled "Method of Calculating the Total Sales Charges" ("Requiring the individual shareholder accounting method would mandate extensive and expensive changes in the recordkeeping methods and procedures utilized by mutual funds, would disrupt current processing of sales and redemptions, and would take several years for the industry to achieve.").

[177] *Id.* The NASD considered fund-level accounting to be the "best alternative as a minimum standard at [the] time." *Id.* The NASD also noted that the industry as a whole would not be prevented from adopting "more protective methods" in the future. *Id.*

[178] Assuming a $10,000 initial investment and an annual return of five percent, the front-end load shareholder would have an account balance after ten years of $15,474; the shareholder in the fund with the 12b–1 fee would have an account balance of $15,162—a deficit of $312 that is attributable to the 75 basis point asset-based sales charge component of the 12b–1 fee. Put another way, rather than paying a $500 sales load, the shareholder has paid over $800 in asset-based sales charges.

[179] *See* NASD, *Report of the Mutual Fund Task Force: Mutual Fund Distribution* at 18 (2005) (*http://www.finra.org/web/roups/rules-regs/documents/rules-regs?p013690.pdf*).

[180] *See* NASD Notice of Proposed Rule Change, *supra* note 74.

[181] As discussed above, funds today are selling many fewer B class shares than just a few years ago. Because systems must remain in place to meet the operational requirements of a single outstanding B class share, this trend should not affect the ability of fund management companies or their service providers to make use of existing systems to convert existing class C shares or other classes.

[182] The NASD sales charge rule currently caps these fees at 75 basis points annually. However, if our proposed rule changes are adopted, the annual cap may be unnecessary because the cumulative amount of ongoing sales charges would be capped.

[183] Such a transfer is unlikely to be an "offer of exchange" under section 11 of the Act, which applies only to offers by a fund or a principal underwriter of a fund. Accordingly, the "tacking" provisions of rule 11a–3 would not apply, and any aging of fund shares that a new intermediary might do would not be done to satisfy any requirement of the Act. *See infra* Section III.K of this Release.

[184] We understand that some intermediaries, such as retirement plans and insurance companies, may not even track share lot history. Those situations present additional issues, which are discussed in Sections III.H and III.M.5 of this Release, *infra.*

ongoing sales charge, and which would act as a "reference load."[185] If a fund offers a class of A shares, the maximum amount of sales charges it could collect from an investor in B or C share classes would be the amount the investor would have paid had the investor invested in A shares with the maximum front-end load.[186] By setting the maximum front-end load, the fund, its board, and the principal underwriter would also establish the maximum amount of the cumulative ongoing sales charge.[187]

As we noted above, sales loads rarely approach the maximum of 8.5 percent permitted under the NASD sales charge rule,[188] yet we understand that rule 12b–1 fees often are charged at the maximum rate permitted, currently 100 basis points annually.[189] One reason may be that 12b–1 fees are deducted in smaller amounts, over longer periods of time, and indirectly from fund assets, and thus, to investors, they may be less salient and not as well understood when compared to front-end sales loads, and the fees themselves appear to be subject to less market pressure.[190] Thus, some of our roundtable panelists and commenters urged that the Commission "externalize" asset-based sales charges (*i.e.,* require that such charges be paid directly from a shareholder's account, rather than indirectly from fund assets) so that the amounts investors are paying would be more noticeable and transparent.[191] Our proposed approach in rule 6c–10(b) would, instead, tie the maximum amount of the ongoing sales charge to the front-end load. To the extent that competitive pressures result in funds imposing lower front-end loads, these pressures should transfer to ongoing sales charges and could result in lower charges or charges that more accurately reflect the value of the distribution services provided. In addition, this proposed approach is designed to reduce the potential that some long-term shareholders will pay a significantly disproportionate share of the distribution costs of a fund.

We request comment on the definition and function of the reference load.

- Should we establish a maximum limit on the amount of ongoing sales charge that may be deducted? Could this approach encourage funds to offer a share class with a high front-end sales load in order to charge a higher cumulative ongoing sales charge on other classes? Are the NASD rule's limits on sales charges a sufficient or appropriate guide for the reference load? The NASD sales charge limits apply at the fund level on an aggregate basis, whereas the ongoing sales charge limits of our rule proposal would apply at the level of individual accounts to limit the cumulative asset-based sales charge paid by any single investor. Should the proposed rule's reliance on the NASD sales charge limits be adjusted to take into account the difference in application? For example, would the proposal's cap have a more constraining effect on the amount of cumulative ongoing sales charges deducted by a fund? If so, should the proposal's cap be increased above the NASD cap to compensate for this? If not, what should the limits be?
- Alternatively, should we assign fund boards the responsibility of establishing the maximum amount of ongoing sales charges that a fund may deduct? If so, what standards or factors would be relevant to their determination?

b. Funds Without a Front-End Load Class

Some funds, of course, might not offer a class of shares with a front-end load, or might offer the front-end load class with asset-based distribution fees of more than 25 basis points (thus disqualifying the front-end load from acting as a reference load). We are proposing that, in these circumstances, the reference load would be the maximum sales charge permitted under NASD Conduct Rule 2830(d)(2) for funds with an asset-based sales charge and a service fee, which currently is 6.25 percent of the amount invested.[192]

We chose this rate because it is the current limit for funds with this type of sales charge structure under the NASD rule, which we approved in 1992 as not being excessive.[193] We believe linking the reference load to the NASD limits may minimize operational burdens of the amendment because funds, their underwriters, and broker-dealers are already familiar with the NASD sales charge rule limits and have structured their systems accordingly.[194] Under our proposal, funds could provide for lower sales loads (through shorter conversion periods) if they wish.[195]

- We request comment on whether the rule should permit the NASD maximum sales charge of 6.25 percent to serve as a default reference load for funds that do not offer a class of shares without an ongoing sales charge. If the rule should not permit this limit, what should be the limit? We are not proposing to use the limits in the NASD sales charge rule for investment companies without an asset-based sales charge (as much as 8.5 percent).[196] This is because, under our proposed rule, each fund charging an ongoing sales charge by definition charges an asset-based sales charge of more than 25 basis points. Would there be any reason to designate these higher limits as a default reference load under our proposed rule amendment? We note that doing so may

[185] Proposed rule 6c–10(d)(14)(i). In the case of shares exchanged within the same fund group, the proposed rule provides that the reference load is the highest applicable sales load of the exchanged or acquired security. Proposed rule 6c–10(d)(14)(ii).

[186] Under the proposed rule, the shareholder's maximum sales load would be reduced if the shareholder previously paid a sales load on fund shares that the shareholder subsequently exchanged for shares of the current fund. Fund shareholders would also be credited for any other sales loads they paid on a particular share purchase. Thus, the maximum sales load rate that an investor could be charged would be defined under the proposed rule as the reference load minus the sum of the rates of: (i) Any sales load incurred by the shareholder in connection with the purchase of fund shares, and (ii) any other sales loads or ongoing sales charges attributable to exchanged shares. Proposed rule 6c–10(d)(10). This approach is consistent with the approach the Commission has taken in implementing section 11 of the Act. Specifically, rule 11a–3 governs sales loads and other charges that may be imposed on an exchange between funds within the same fund group, and is intended to help ensure that shareholders receive credit for all sales charges incurred on a particular purchase of fund shares and are protected from the sales practice abuse of switching, *i.e.,* the practice of inducing shareholders of one fund to exchange their shares for those of a different fund solely for the purpose of exacting additional sales charges. *See* Offers of Exchange Involving Registered Open-End Investment Companies, Investment Company Act Release No. 17097 (Aug. 3, 1989) [54 FR 35177 (Aug. 24, 1989)] ("Rule 11a–3 Adopting Release"). We have also proposed conforming changes to rule 11a–3, as discussed in Section III.K of this Release, *infra.*

[187] *See also infra* Section III.D.2.d.4.

[188] *See* NASD Conduct Rule 2830(d)(1)(A).

[189] *See supra* note 42. According to statistics compiled by our staff, 27 percent of funds that impose 12b–1 fees charge a rate of exactly 100 basis points.

[190] *See* Brad M. Barber, Terrance Odean, and Lu Zheng, *Out of Sight, Out of Mind: The Effects of Expenses on Mutual Fund Flows,* 78 J. Bus. 2095 (Dec. 2003) (mutual fund investors are less willing to pay higher front-end loads because they are more obvious and salient, but are less sensitive to annual operating expenses, including rule 12b–1 fees).

[191] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 184–85 (Richard Phillips, K&L Gates). *See infra* Section III.I of this Release regarding an alternative approach we are proposing that would permit externalized sales charges at the election of funds and their underwriters.

[192] Proposed rule 6c–10(d)(14)(iii). Some funds, for example, offer only a single class of C shares. *See also* Section II.C.1 of this Release, *supra,* for a discussion of the caps under the NASD sales charge rule.

[193] *See supra* Section II.C.1 of this Release.

[194] *See supra* note 161 and accompanying text.

[195] The rule requires that, at a minimum, shares must convert on or before the end of the maximum conversion period. Proposed rule 6c–10(b)(1)(i). *See also supra* notes 171–173 and accompanying text.

[196] NASD Conduct Rule 2830(d)(1)–(2) (describing the different sales load limits, ranging between 8.5% and 6.25%, depending on whether the fund charges an asset-based distribution fee and offers rights of accumulation and quantity discounts).

further extend conversion periods and, thus, the period of time that some investors may pay ongoing sales charges.

• Under our proposal, funds would be permitted to deduct total sales charges up to the maximum sales charge permitted under the NASD sales charge rule. Would our proposed use of the 6.25 percent NASD limit as a default reference load give an advantage to funds that do not offer a class of A shares? To avoid this result, should the Commission identify a "typical" maximum front-end sales load that more closely tracks current industry practice (*e.g.,* four, five or six percent) and rely on such a sales load as a default reference load when a fund does not offer a class of A shares? If so, what should that default reference load be?

• We note that in recent years, the costs of trading equity securities have declined significantly.[197] In this regard, should the Commission consider proposing a rule that would establish a new limit on sales charges, in light of changes in technology and the markets?

• As an alternative, should we treat the NASD sales charge limit of 6.25 percent as the reference load for purposes of determining the maximum amount of ongoing sales charge in all cases, even if a fund has a front-end load class of shares that can serve as the reference load? Such an approach would provide economically equivalent treatment of funds that offer a class of A shares and those that do not. It would not, however, provide equivalent treatment of investors who choose to pay a front-end sales load with those that pay an ongoing sales charge. If the maximum front-end sales load is lower than 6.25 percent, shareholders in classes with an ongoing sales charge may bear a disproportionate amount of distribution costs (compared to shareholders in class A shares).

c. Treatment of Scheduled Variations

The proposed amendments to rule 6c–10 would not require (but would permit) funds to apply any quantity discounts or scheduled variations in the front-end load for which the investor may qualify when determining the reference load for an ongoing sales charge. Investors who pay asset-based sales charges today as a substitute for a front-end load generally are not offered any discounts or variations in the amount of fees they pay indirectly through their investment in the fund.[198] We are concerned that requiring funds and their intermediaries to calculate a different reference load for each purchase of fund shares would introduce greater cost and complexity and could affect the willingness of funds and their underwriters to offer quantity discounts or scheduled variations on front-end sales loads to investors.

We request comment on whether funds should be required to incorporate scheduled variations in the front-end load when determining a shareholder's reference load.

• How would funds likely react to this requirement if we adopted it? Would this requirement discourage funds from offering scheduled variations in the front-end load? Would it cause some funds to discontinue front-end load share classes entirely? Would it encourage funds to offer share classes with high front-end sales loads that effectively operate to increase the amount of ongoing sales charges the fund collects in other share classes? [199] How would investors react? Would this requirement affect the number of fund investors selecting the ongoing sales charge class?

d. Sales Load on Asset Growth

Proposed rule 6c–10(b) would operate so that a fund and its investors could determine the conversion period at the time the investor makes a purchase of shares. Each purchase (or each "lot") would have a separate conversion period, and the shares associated with each lot would be programmed to convert on a particular date. The maximum length of the conversion period would be unaffected by any subsequent increase or decrease in the value of the shares purchased. As a result, the fund underwriter would collect more ongoing sales charges if the value of the fund shares increased and collect less if the value decreased.[200] Shareholders would also benefit from the growth (or bear the losses) in the value of the fund shares that would not have otherwise been purchased had the shareholder paid a front-end sales load.

We believe that this approach is straightforward, is easy for investors to understand, is easy to administer, protects shareholders' interests in the allocation of risks and benefits between the shareholder and the fund's principal underwriter, and permits funds to deduct fees for distribution in the same manner that they currently deduct 12b–1 fees. This approach is different, however, from the approach currently taken by rule 6c–10 with respect to determining the maximum amount of a deferred sales load such as a CDSL.[201] Rule 6c–10(a)(1) limits the maximum amount of a deferred sales load to an amount specified at the time the shares were purchased.[202] Thus, in the case of deferred sales loads, investors never pay a higher amount as a result of fund performance.

• Given that our goal is to treat asset-based sales charges the same as other deferred sales loads, should we use the same approach for both? If so, which method should be used? If we require that ongoing sales charges be based on an amount determined at the time of purchase, would funds in effect be required to track each individual shareholder dollar paid in ongoing sales charges? Should we instead propose to amend rule 6c–10 (proposed rule 6c–10(a)) to permit underwriters to collect

[197] *See* United States Government Accountability Office, Securities Markets: Decimal Pricing Has Contributed to Lower Trading Costs and a More Challenging Trading Environment, 8–29 (May 2005) (*http://www.gao.gov/new.items/d05535.pdf*); *see also* James Angel, Lawrence Harris & Chester S. Spatt, Equity Trading in the 21st Century, 8–13 (USC Marshall School of Business May 18, 2010) (*http://ssrn.com/abstract=1584026*).

[198] Investors nevertheless may prefer to defer the payment of sales charges rather than paying a front-end sales load in some circumstances, because a greater portion of their money is invested immediately in the fund. *See* Rule 6c–10 Proposing Release, *supra* note 57, at section titled "Discussion."

[199] This could occur, for example, if a fund offered a share class with a front-end load of 8.5 percent but with scheduled variations at low investment thresholds for investors actually purchasing that class. This result may be unlikely, however, because funds would have to disclose the maximum front-end load in fund performance advertisements and use it to compute the fund's performance. *See, e.g.,* Rule 482 under the Securities Act [17 CFR 230.482], Rule 34b–1 under the Investment Company Act, and Item 26(b) of Form N–1A. *See also* NASD Conduct Rule 2210.

[200] For example, assume that an investor purchased $10,000 of a class of shares with no front-end sales load and an ongoing sales charge of 0.75% with an eight-year conversion period. If the investor obtained an annual rate of return of 5%, he or she would pay $697 in ongoing sales charges over eight years and have an account balance of $13,951. If the investor received an annual return of 10%, he or she would pay $835 in ongoing sales charges and have an account balance of $20,294. If the investor received a negative annual return of −5%, he or she would pay $492 in ongoing sales charges and have an account balance of $6,227 after eight years.

[201] We are also proposing to make certain non-substantive changes to the heading of current rule 6c–10, and parts of 6c–10(a), designed to clarify the names and use of the type of sales load practice discussed, including deferred, fund level, and account-level sales loads.

[202] *See* 1996 Rule 6c–10 Amendments, *supra* note 58. Prior to the amendment, rule 6c–10 had required that CDSLs be based on the lesser of the NAV of the shares at the time of purchase or the NAV at the time of redemption. We eliminated this requirement, deferring to the NASD to address such matters in its sales charge rule. At the same time, we required that the amount of a deferred sales load not exceed a specified percentage of the NAV of the fund's shares at the time of purchase so that investors "be given the benefit, if any, of deferring the load payment should there be an increase in the shares' NAV." *Id.* at n.16 and accompanying text.

higher deferred sales loads as a result of fund performance?

3. Reinvestment of Dividends and Other Distributions

The proposal would permit funds to offer to invest shares acquired pursuant to a reinvestment of dividends or other distribution in the same share class as the shares on which the dividend or distribution was declared. If the share class has an ongoing sales charge, however, the reinvested shares would have the same conversion period as the shares on which the dividend or distribution was declared.[203] As a result, reinvested shares may incur an ongoing sales charge, but would convert to a share class without an ongoing sales charge no later than the conversion date of the shares on which the dividend or distribution was declared.[204] This approach would directly benefit investors, compared to the current approach under the NASD sales charge rule (which does not limit asset-based distribution fees from being charged on reinvested dividends indefinitely), because any ongoing sales charge deducted on reinvested dividends would no longer be charged after the conversion date of the original shares. This approach also reflects what we understand to be the practice most fund groups use to account for reinvestment of distributions on class B shares, and thus would permit them to avoid incurring costs associated with revising current fund systems—costs that may ultimately be borne by fund shareholders.

Our proposed approach would be different, however, from the NASD sales charge rule, which prohibits funds from imposing front-end sales loads and CDSLs on reinvested dividends.[205] The reinvestment of dividends does not involve the expenditure of sales-related efforts, and the NASD viewed such loads as "duplicative."[206]

- In view of the NASD rule and our intention to treat ongoing sales charges as another form of sales load, should we instead require funds to reinvest dividends and other distributions in a share class that does not have any ongoing sales charge?[207]
- We request comment on whether we should adopt the proposed approach or, alternatively, that of the NASD sales charge rule. Would there be significant costs associated with reinvesting small amounts of retail investor accounts in a different share class? If we adopt the proposed approach, should shares acquired through a dividend reinvestment plan be required to convert before, after, or at the same time as, the shares on which the dividend or distribution was declared?
- More generally, what are the prevailing market practices with regard to reinvested dividends and other distributions? What is the annual volume of dividends and distributions offered by funds, and reinvested by shareholders? What is the magnitude of fees currently paid by investors on reinvested dividends? Do funds currently offer the option for investors to reinvest dividends in other share classes?

4. Role of Directors—Proposed Guidance

Unlike rule 12b–1, the proposed amendments to rule 6c–10 would not impose any explicit responsibilities on fund boards of directors to approve (or re-approve) asset-based sales charges under the proposed rule, although we fully expect fund boards would continue to play an important role in protecting fund investors, as discussed more fully below. Directors would continue to have fiduciary duties with respect to the oversight of the use of fund assets under state law and under section 36(a) of the Act.[208] When the Commission adopted rule 12b–1 in 1980, we sought to address statutory concerns about the conflict of interest between fund advisers (who benefit from an increase in the amount of fund assets) and fund investors (who may not).[209] We were concerned about whether a fund and its shareholders would benefit from a decision to pay distribution costs from fund assets, and viewed such a decision as "a particularly difficult business judgment" that is complicated by the conflicts of interest which are present.[210] Therefore, we made these arrangements subject to the careful scrutiny of fund directors.[211] Under our proposed approach, each shareholder would pay indirectly through the deduction of ongoing sales charges by the fund only the proportionate expenses associated with the sale of his or her fund shares. When those costs are paid, the shares purchased would automatically convert to a class of shares not paying an ongoing sales charge. The fund paying an ongoing sales charge would, in a sense, operate merely as the vehicle by which the fund shareholder pays the underwriter what the investor would have paid in the form of a front-end load at the time shares were purchased. Funds and fund underwriters would have little incentive to collect ongoing sales charges at excessive rates—a class of shares paying a higher rate of ongoing sales charge would simply convert earlier to a class that does not pay an ongoing sales charge.

We view the treatment of the ongoing sales charge as another form of sales load (together with the automatic conversion requirement) as critical in our decision not to propose a specific role for the board of directors, while addressing the underlying concerns of section 12(b) of the Act. Directors will, however, continue to have fiduciary obligations under state law and section 36(a) of the Act to consider whether use of the fund's assets to pay ongoing sales charges, within the proposed caps, is in the best interest of the fund and fund investors.[212] We expect to provide guidance in our adopting release for this proposal, to assist fund directors in satisfying their fiduciary duties.

- We request comment on the following proposed guidance.

We believe that fund directors should consider the amount of the ongoing sales charge and the purposes for which it is used according to the same procedures they use to consider and approve the amount of the fund's other sales charges in the underwriting contract under section 15(c) of the Act.[213] We further believe that directors can and should view these asset-based distribution fees as integral parts of the fund's sales load structure to which they give their assent when they annually approve the fund's underwriting contract. In determining whether to approve (or re-approve) the underwriting contract, the directors must exercise their reasonable business judgment to decide, among other things, whether the terms of the contract benefit the fund (or its relevant class) and its shareholders, whether the underwriter's compensation is fair and reasonable

[203] *See* proposed rule 6c–10(b)(1)(ii).

[204] *Id.*

[205] Proposed rule 6c–10(b)(1)(ii) would address the terms under which a fund with an ongoing sales charge could reinvest dividends and other distributions in shares of a class with an ongoing sale charge.

[206] NASD Notice to Members 97–48 (Aug. 1997).

[207] *See* NASD Conduct Rule 2830(d)(6)(B).

[208] *See supra* note 156.

[209] *See* 1980 Adopting Release, *supra* note 23, at section titled "Discussion."

[210] *Id.* at section titled "Independence of Directors."

[211] *See* rule 12b–1(e).

[212] *See also supra* note 156.

[213] Section 15(c) provides, in relevant part, that "it shall be unlawful for any registered investment company * * * to enter into, renew, or perform any contract or agreement * * * whereby a person undertakes regularly to serve or act as * * * principal underwriter for such company unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of directors, who are not parties to such contract or agreement or interested persons of any such party * * *."

(considering the nature, scope and quality of the underwriting services rendered), and whether the sales loads (including the ongoing sales charge) are fair and reasonable in light of the usual and customary charges made by others for services of similar nature and quality. In evaluating the "fairness and reasonableness" of the contract, the directors should consider any factors that may be relevant, including whether the fund's distribution networks and overall structure are effective in promoting and selling fund shares given current economic and industry trends, any available breakpoints on advisory fees that may be attained from future growth in fund assets, and any economies or diseconomies of scale that may arise from continued growth of fund assets.[214]

- Is this proposed guidance appropriate? Does it provide assistance to fund directors in evaluating ongoing sales charges? Are there other factors that would be relevant to the guidance we propose to provide? Should the guidance link board approval of the principal underwriting contract to board oversight of the use of fund assets for an ongoing sales charge? If not, what standard or requirements should apply to board oversight of ongoing sales charges?
- We request comment on our proposed overall approach to refashioning the role of the board of directors in overseeing asset-based distribution fees.[215] Is there a better approach we could take? Should we retain a formal role for directors in any rule permitting funds to pay for distribution expenses from fund assets? If so, what should that role be? Should we retain the current rule 12b–1, but update the suggested factors for director consideration in order to provide directors with additional guidance? For example, should the factors specifically recognize that directors may consider that ongoing sales charges provide an alternative to a front-end sales load and, in that sense, benefit shareholders who choose to invest in a share class that has an ongoing sales charge? Should directors, in addition, consider whether these arrangements are structured so that individual shareholders do not bear a disproportionate share of distribution expenses? In this regard, we are particularly interested in the views of fund directors.[216]

E. Proposed Amendments to Rule 10b–10: Transaction Confirmations

Rule 10b–10 under the Securities Exchange Act requires broker-dealers to disclose specific information to their customers about securities transactions, including the price at which the transaction was effected, remuneration such as sales charges paid by the customer to the broker-dealer (if it is acting in an agency capacity), and in certain circumstances remuneration received by the broker-dealer from third parties such as a mutual fund or its affiliates.[217] The Commission and its staff have taken the position, with respect to mutual fund transactions, that a broker-dealer may satisfy its rule 10b–10 obligations without providing customers with a transaction-specific document that discloses information about sales charges or third-party remuneration, so long as the customer receives a fund prospectus that adequately discloses that information.[218] Today, in connection with the other amendments we are proposing to limit cumulative sales charges and help investors make better choices when selecting a fund that imposes sales charges, we are also proposing amendments to rule 10b–10 to require disclosure of additional information on transaction confirmations in connection with transactions involving securities issued by mutual funds.[219] In addition, we are proposing to amend rule 10b–10 to require disclosures related to callable debt securities, and to eliminate outdated transition provisions.[220]

1. Confirmation Disclosure of Sales Charges and Fees

We are proposing to amend rule 10b–10 to require confirmations to set forth

[214] We understand that many fund boards currently consider these, or similar, factors when evaluating funds' underwriting contracts.

[215] Throughout this proposal we use the term "Asset-Based Distribution Fee" to mean any fee deducted from fund assets to finance distribution activities pursuant to rule 12b–2(b) (Marketing and Service Fee), rule 12b–2(d) (Grandfathered 12b–1 Shares), or rule 6c–10(b) (Ongoing Sales Charge).

[216] Our proposed approach was informed by input from independent director representatives. *See* Comment Letter of the Independent Directors Council (July 19, 2007) ("IDC believes that the role of directors in overseeing 12b–1 plans should be consistent with the role of directors in overseeing front-end sales loads and fund distribution practices generally."); Letter from the Mutual Fund Directors Forum to Andrew J. Donohue, Director of the Division of Investment Management, Securities and Exchange Commission (May 2, 2008) (*http://www.mfdf.com/images/uploads/resources_files/Director_Duties_MFDF_Letter_May_2_2008.pdf*) ("the quarterly review of expenditures under a fund's 12b–1 plan by directors serves little purpose, particularly since directors can have little impact in the first place on 12b–1 costs incurred by funds").

[217] 17 CFR 240.10b–10. Rule 10b–10 generally requires broker-dealers that effect transactions for customers in securities, other than U.S. savings bonds or municipal securities, which are covered by Municipal Securities Rulemaking Board ("MSRB") rule G–15 (which applies to all municipal securities brokers and dealers) to provide customers with written notification, at or before the completion of each transaction, of certain basic transaction terms. This transaction confirmation must disclose, among other information: The date of the transaction; the identity, price and number of shares bought or sold (*see* 17 CFR 240.10b–10(a)(1) (the confirmation must also include either the time of the transaction or the fact that it will be furnished upon written request)); the capacity of the broker-dealer (*see* 17 CFR 240.10b–10(a)(2)); the net dollar price and yield of a debt security (*see* 17 CFR 240.10b–10(a)(5) and (6)); and, under specified circumstances, the amount of compensation paid by the customer to the broker-dealer, whether the broker-dealer is receiving any other remuneration in connection with the transaction, and whether the broker-dealer receives payment for order flow (*see, e.g.,* 17 CFR 240.10b–10(a)(2)(i)(B), (C), and (D)).

The rule's requirements, portions of which have been in effect for over 60 years, provide basic investor protections by conveying information that allows investors to verify the terms of their transactions, alerts investors to potential conflicts of interest with their broker-dealers, acts as a safeguard against fraud, and provides investors a means to evaluate the costs of their transactions and the execution quality. *See* Exchange Act Release No. 34962 (Nov. 10, 1994) [59 FR 59612, 59613 (Nov. 17, 1994)].

[218] *See* Exchange Act Release No. 49148 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)] at section IV.A.2. *See also* Investment Company Institute, SEC Staff No-Action Letter (pub. avail. Apr. 18, 1979) ("ICI Letter"). In this letter, the staff of the Commission's Division of Market Regulation (now known as the Division of Trading and Markets) stated that it would not recommend enforcement action against broker-dealers that did not provide transaction-specific disclosure about mutual fund loads and related charges, so long as the customer received a prospectus that "disclosed the precise amount of the sales load or other charges or a formula that would enable the customer to calculate the precise amount of those fees." This letter reflected a position that the Commission took when it adopted rule 10b–10, when it articulated the view that, in the case of registered securities offerings, separate confirmation disclosure of third-party remuneration would be redundant if the customer received a final prospectus disclosing that information. *See* Exchange Act Release No. 13508 at n.41 (May 5, 1977) [42 FR 25318 (May 17, 1977)].

[219] We proposed more comprehensive changes to the broker-dealer confirmation requirements in 2004 through proposed Exchange Act rule 15c2–2 as part of a broader initiative regarding disclosures made to investors at the time an investment decision is made. *See* Securities Exchange Act Release No. 49148, (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)]. *See also* Securities Exchange Act Release No. 51274 (Feb. 28, 2005) [70 FR 10521 (Mar. 1, 2005)] (reopening of comment period). Proposed rule 15c2–2 would have governed transactions in mutual funds, unit investment trust ("UIT") interests and 529 college savings plans, and in contrast to rule 10b–10, would have prescribed a specific form to be used for confirmation disclosure. The more targeted confirmation changes we are proposing today, unlike our earlier proposal, involve amendments to rule 10b–10 rather than a new confirmation rule and confirmation form. This in part reflects comments we received on the rule 15c2–2 proposal, including commenters' concerns as to the cost of requiring a separate confirmation rule and confirmation form for certain securities. *See, e.g.,* Comment Letter of Securities Industry Association (Apr. 12, 2004) (File No. S7–06–04) ("brokerage firms would have to bifurcate what is now a single stream of confirmations, and create an entirely new stream of information for mutual fund confirmations and a different stream for all other securities transactions").

[220] *See infra* Section III.E.2 of this Release.

information regarding front-end and deferred sales charges, as well as ongoing sales charges and marketing and service fees (as defined in proposed Investment Company Act rules 6c–10 and 12b–2) associated with transactions involving mutual fund securities.[221]

In making this proposal, we are mindful that while improving confirmation disclosure of such fees can be expected to make the confirmation a more complete record of the transaction and to promote investor understanding of the fees, customers do not receive confirmations until after completing their purchases of mutual funds; accordingly, providing for improved disclosure of cost information prior to the sale may be an additional step that we could consider to help investors make better informed investment decisions.[222]

Under the proposal, transaction confirmations for purchases of those securities would disclose the amount of any sales charge that the customer incurred at the time of purchase, in percentage and dollar terms, along with the net dollar amount invested in the security and the amount of any applicable breakpoint or similar threshold used to calculate the sales charge.[223] This information would be expected to help make the confirmation a more complete record of the transaction and promote investor understanding of associated costs, as well as helping customers identify any errors associated with the front-end sales charges they incur; inclusion of breakpoint information on the confirmation particularly should assist investors in conveniently identifying any breakpoint-related errors in the sales charges they incurred.[224]

Also, if the customer may pay a deferred sales charge upon redemption of the shares (such as a contingent deferred sales charge), a transaction confirmation provided to the customer at the time of purchase would disclose the maximum amount of any deferred sales charge that the customer may pay in the future.[225] The amount would be expressed as a percentage of the net asset value at the time of purchase or at the time of redemption or sale, as applicable.[226] This proposed requirement is designed to provide a customer more complete information about the deferred sales charge (which may serve as an economic substitute for the front-end sales charge) that the customer may be obligated to pay in the future.

In addition, if, after the time of purchase, the customer will incur any ongoing sales charge or marketing and service fee, purchase confirmations would disclose the following information: The annual amount of that charge or fee, expressed as a percentage of net asset value; the aggregate amount of the ongoing sales charge that may be incurred over time, expressed as a percentage of net asset value; and the maximum number of months or years that the customer will incur the ongoing sales charge. We anticipate that this disclosure could be made relatively simply, for example: "You will pay a maximum total ongoing sales charge of 5%, deducted from the assets of the fund in which you are investing at an annual rate of 1% over the next 5 years. You also will pay marketing and service fees of 0.25% for as long as you own the fund."[227]

Confirmations further would include the following statement (which may be revised to reflect the particular charge or fee at issue): "In addition to ongoing sales charges and marketing and service fees, you will also incur additional fees and expenses in connection with owning this mutual fund, as set forth in the fee table in the mutual fund prospectus; these typically will include management fees and other expenses. Such fees and expenses are generally paid from the assets of the mutual fund in which you are investing. Therefore, these costs are indirectly paid by you."[228] This proposal generally is intended to help make transaction disclosure more complete by helping to ensure that customers are informed about the use of ongoing sales charges that serve as a substitute for front-end sales charges, as well as additional uses of mutual fund assets to pay for distribution. The statement about the presence of additional charges is intended to help address the risk that confirmation disclosure of some ongoing charges or fees may cause some customers to wrongly infer that those charges or fees are all the ongoing costs that the customers would incur in connection with owning a mutual fund security.[229]

Finally, confirmations for transactions in which a customer redeems or sells a mutual fund security the customer owns would disclose the amount of any deferred sales charge the customer has incurred or will incur, expressed in dollars and as a percentage of the net asset value at the time of purchase or at the time of redemption or sale, as applicable.[230] This information also would be expected to help make the confirmation a more complete record of the transaction and help customers identify any errors.

We are proposing corresponding changes to the alternative periodic reporting provisions of rule 10b–10(b), which in part permit quarterly reporting

[221] The term "mutual fund security" would be defined by reference to the definition of "open-end company" in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1)). While exchange-traded funds are typically organized as open-end companies, we understand that exchange-traded funds do not typically impose the sales charges or other fees that would be subject to these disclosure requirements.

[222] In this regard, the staff is considering recommendations for our future consideration to enhance the information provided at the point of sale. We also note that Section 919 of the Dodd-Frank Wall Street Reform and Consumer Protection Act states "[n]otwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor."

[223] *See* proposed new paragraph (a)(10)(i) of rule 10b–10. For purposes of these rule 10b–10 amendments, the term "sales charge" is intended to be comparable to the term "sales load," which the Investment Company Act generally defines to mean the difference between the public price of a security and the portion that is invested (less deductions for certain fees). *See* section 2(a)(35) of the Act.

[224] *See* Report of the Joint NASD/Industry Task Force on Breakpoints (July 2003) ("Breakpoint Report") (*http://www.finra.org/web/groups/industry/@ip/@issues/@bp/documents/industry/p006434.pdf*) ("Confirmations should reflect the entire percentage sales load charged to each front-end load mutual fund purchase transaction. This information would enable investors to verify that the proper charge was applied.").

[225] *See* proposed rule 10b–10(a)(10)(ii).

[226] *Id.* A mutual fund could decide to calculate the deferred sales load as the lower of the net asset value at the time of purchase or at the time of redemption. Under rule 6c–10 under the Investment Company Act, a deferred sales charge may not exceed "a specified percentage of the net asset value or the offering price at the time of purchase." Rule 6c–10(a)(1).

[227] To the extent that the rate of the marketing and service fee associated with a particular mutual fund were to increase or decrease following the customer's purchase, rule 10b–10 would not require the broker-dealer to provide an updated confirmation statement to the customer. This information is typically disclosed in a supplement to a fund's prospectus filed under rule 497 under the Securities Act.

[228] *See* proposed new paragraph (a)(10)(iii)(B) of rule 10b–10. As discussed above, the term "ongoing sales charge" would be defined in proposed rule 6c–10 under the Investment Company Act of 1940, 17 CFR 270.6c–10, and the term "marketing and service fee" would be defined in proposed rule 12b–2 under that Act, 17 CFR 270.12b–2.

[229] We are not proposing to require that purchase confirmations disclose management fees or other operating expenses, as those costs are disclosed in the prospectus fee table and are not directly implicated by the transaction. We also are not proposing to specifically require that purchase confirmations disclose other categories of compensation that the broker-dealer receives in connection with the particular mutual fund being purchased, such as "revenue sharing" received from a fund's adviser.

[230] *See* proposed new paragraph (a)(11) of rule 10b–10.

for transactions involving investment company plans.[231] As revised, such periodic statements involving mutual fund security transactions would include disclosure of sales charges consistent with the proposed requirements for other confirmations.[232]

In sum, these proposed requirements are intended to help make the confirmation a more complete record of the transaction, help investors in mutual fund securities be more fully aware of the sales charges they pay, and assist investors in verifying whether they paid the correct sales charge set forth in the prospectus. In that regard, these proposed requirements seek to take into account support that commenters previously have expressed for improved confirmation disclosure of sales charges, while also taking into account commenters' concerns regarding the costs that would be associated with more extensive changes to confirmation disclosure requirements.[233] We understand that some broker-dealers may already provide disclosures about front-end sales charges in their mutual fund confirmations, in part in response to the recommendations of the Joint NASD/Industry Task Force on Breakpoints.[234]

In the event we adopt these amendments to provide for confirmation disclosure of such sales charges, we intend to withdraw a no-action letter that the Commission's staff issued to the Investment Company Institute in 1979, related to confirmation disclosure of mutual fund sales loads and related fees, as that letter would no longer be consistent with the rule.[235]

We request comment on all aspects of these proposals, including the following:

- Would the information we propose to include in transaction confirmations be useful to investors? Would confirmation disclosure of quantified information about ongoing sales charges and marketing and service fees, without quantified information of other ongoing costs associated with owning mutual funds, imply that no other ongoing fees would be associated with their purchase? Would it imply that other ongoing fees are smaller or otherwise less important? If so, should confirmations also set forth the percentage amount of other ongoing expenses, including, but not limited to: (a) Other shareholder fees, as disclosed in the mutual fund prospectus fee table pursuant to Item 3 of Form N–1A; (b) management fees, as disclosed in the mutual fund prospectus fee table pursuant to Item 3 of Form N–1A; and (c) any other expenses, disclosed in the mutual fund prospectus fee table pursuant to Item 3 of Form N–1A?
- Conversely, given that marketing and service fees (unlike ongoing sales charges) would not act as economic substitutes for front-end sales charges, should we amend rule 10b–10 to require disclosure of quantified information about marketing and service fees? Could requiring confirmation disclosure of marketing and service fees lead to disparate disclosure to the extent that mutual funds follow disparate practices with regard to whether they use the proceeds of marketing and service fees to pay for certain types of services?
- Would the statement set forth in proposed rule 10b–10(a)(10)(iii)(B) be sufficient to put investors on notice that they will be subject to additional costs over and above the disclosed front-end, deferred and ongoing charges and fees? Alternatively, should such ongoing fees be disclosed in some document other than the transaction confirmation? For example, would the account statement required by self-regulatory organization ("SRO") rules[236] be a more appropriate document for disclosures of ongoing costs, or for information about the source and amount of broker-dealer remuneration in connection with the mutual fund?
- Would it be helpful to investors to require disclosure of front-end and deferred sales charges in dollar terms? Would limiting the disclosure to percentage terms be a cost-effective way of permitting customers to check the terms of the transaction? Would it be helpful to investors to require that confirmations for mutual fund purchase transactions set forth the maximum amount of any deferred sales charge that the customer may incur upon redeeming the mutual fund?[237]
- Should rule 10b–10 also specify the format and presentation of how such cost and fee information should be disclosed (*e.g.,* specifically requiring that such information be highlighted on the confirmation, or placed in the front of a confirmation if a paper-based confirmation is used, or be subject to a minimum font size)?
- Should transaction confirmations—or some other document—seek to quantify the total amount of front-end, ongoing and deferred fees the specific investor may expect to incur over time under reasonable assumptions; if so, how could such an "all in" fee be presented most effectively?
- Should purchase confirmations for mutual funds also be specifically

[231] *See* rule 10b–10(b) (permitting the disclosure of transaction-related information in periodic account statements rather than in confirmations for securities purchased or sold on a periodic basis through "investment company plans"); rule 10b–10(d)(6) (defining "investment company plan" to include individual retirement or pension plans and individual contractual arrangements that provide for periodic purchases or redemptions of investment company securities).

[232] In particular, paragraph (b)(2) of rule 10b–10, as revised, would require disclosure of "any ongoing sales charges or marketing and service fees incurred in connection with the purchase or redemption of a mutual fund security." Consistent with the proposed requirements of paragraphs (a)(10) and (a)(11), this would encompass disclosure of front-end, deferred, and ongoing sales charges.

[233] Investor advocates who commented on proposed rule 15c2–2 generally supported confirmation disclosure of costs. *See* Comment Letter of the Consumer Federation of America, Fund Democracy, Consumer Action, and the Consumers Union (Apr. 21, 2004) (File No. S7–06–04) ("Confirmation and other post-sale disclosure should quantify the costs incurred as a result of the transaction, including any costs or payments that may have been estimated in pre-sale disclosures."). More generally, the Commission also received a number of comments from the public that supported our proposals for improving disclosure. *See, e.g.,* Comment Letter of T. Booy (Mar. 16, 2004) (File No. S7–06–04); Comment Letter of R. Barndt (Mar. 15, 2004).

While securities-industry commenters generally opposed expanding the scope of confirmation disclosures in other ways (and, as noted above, stated that extensive changes to existing broker-dealer confirmation systems would be particularly expensive), a number of those commenters supported confirmation disclosure of front-end sales charges, while not supporting confirmation disclosure of ongoing costs of ownership. In the view of those commenters, confirmations fundamentally are records of transactions that are provided too late to assist investors in making decisions. *See, e.g.,* Commenter Letter of Securities Industry Association (Apr. 4, 2005) (File No. S7–06–04) (supporting confirmation disclosure of sales charges in dollar and percentage terms, which would help investors determine whether they received correct breakpoint discounts; opposing confirmation disclosure of information about ongoing fees and conflicts of interest as costly, repetitive and too late to be useful); Comment Letter of Legg Mason Wood Walker Inc (Apr. 4, 2005) (File No. S7–06–04) (opposing addition of items other than sales charge information on confirmations as duplicative and as providing information too late to be useful for investors; based on their experience, investors look to the confirmation for information about the date, amount and price of their mutual fund investments); Comment Letter of Charles Schwab & Co., Inc. (Apr. 4, 2005) (File No. S7–06–04) (supporting confirmation disclosure of transaction-specific sales fees in dollar and percentage terms; opposing disclosure on purchase confirmations of disclosure of contingent deferred sales charges, and strongly opposing confirmation disclosure of comprehensive annual costs and of conflict of interest information).

[234] *See* Breakpoint Report, *supra* note 224.

[235] *See* ICI Letter, *supra* note 218; *see also* Breakpoint Report, supra note 224 ("In connection with this recommendation, the Task Force also recommends that the SEC staff revisit its April 18, 1979 No-Action Letter, which permits the omission of sales charge information from confirmations.")

[236] *See* NASD Conduct Rule 2340 (Customer Account Statements).

[237] FINRA rules currently require broker-dealers to include the following disclosure in transaction confirmations for investment company purchases: "On selling your shares, you may pay a sales charge. For the charge and other fees, see the prospectus." *See* NASD Conduct Rule 2830(n).

required to set forth quantified information about the source and amount of all remuneration that the broker-dealer directly or indirectly receives in connection with the mutual fund, including, for example, "revenue sharing" received from a fund's adviser?

• In addition, we request comment on whether the proposed disclosures should be applicable to transactions in other securities that may carry sales charges, such as UIT interests, real estate investment trust interests or direct participation plan interests. Commenters particularly are asked to address any disclosure issues that are particular to each of those products; UIT interests, for example, may carry a combination of initial sales charges, deferred sales charges (deducted in periodic installments) and so-called "creation and development" fees. To the extent these amendments are applicable to UIT interests, would special provisions be needed to address transactions involving variable insurance products?

• We further request comment on whether the proposed requirement for disclosure of front-end sales charges also should require disclosure of equivalent costs (*i.e.,* the difference between the public price and the resulting amount invested) incurred in connection with purchases made during primary offerings of closed-end funds. In addition, we request comment on whether the confirmation requirements of rule 10b–10 should be revised to encompass transactions in 529 college savings plan interests, which, as municipal securities, currently are excluded from the application of rule 10b–10.

2. Additional Changes to the Confirmation Rule

In addition to proposing confirmation rule changes in connection with our proposed replacement of rule 12b–1 with a new regulatory scheme, we are also proposing to amend rule 10b–10 to require disclosure of the first date on which certain debt securities may be called.[238] Disclosure of the first date upon which a debt security may be called will provide customers with meaningful information that is intended to help avoid any confusion for investors who are not otherwise aware that a bond may be called on a date earlier than the one specified on the confirmation. In particular, the rule as revised would require disclosure of the first date on which the security may be called when a broker-dealer effects a transaction in a debt security on the basis of yield-to-call.[239] Currently, the rule requires a broker-dealer that had effected a transaction in a debt security on the basis of yield-to-call to disclose, among other information, the type of call, the call date, and the call price. A bond may be subject to call on a series of dates; as a result, although a confirmation may have stated what the bond's yield-to-call would be if the bond is called on one of those dates, the confirmation may not have informed a customer about the first possible date on which a bond is subject to call. That may confuse investors who are not otherwise aware that a bond may be called on a date earlier than the one specified on the confirmation. The possibility of earlier call can subject the investor to additional reinvestment risk, because the investor may have worse alternatives for reinvesting the proceeds if the issuer calls the security when prevailing interest rates decline.

• We request comment on whether this proposal would provide useful information to investors.

Finally, we propose to delete paragraph (e)(2) of rule 10b–10, which sets forth transitional provisions related to confirmation requirements for security futures products, and which expired in 2003.[240]

• We request comment on this technical amendment.

F. Shareholder Approval

Marketing and Service Fee. Under proposed new rule 12b–2, a fund would be required to obtain the approval of a majority of its shareholders before it could institute, or increase the rate of, a marketing and service fee.[241] However, shareholder approval would not be required for a fund to institute a marketing and service fee with respect to a new class of fund shares, allowing a fund to institute (or increase) a marketing and service fee and apply it only to investments in the new class and avoid the cost of soliciting proxies to obtain shareholder approval.[242]

An existing shareholder in a share class that institutes a marketing and service fee may have invested in reliance on disclosure that the fund does not charge such fees or charges them at a lower rate. In order to avoid paying new marketing and service fees, the shareholder's only recourse would be to redeem his shares and risk incurring significant additional costs, including potential capital gains taxes. Less vigilant investors may only discover new marketing and service fees after paying them for some time. Thus, we believe that these charges should not be imposed or increased without shareholder approval.[243]

For similar reasons, rule 12b–1 currently requires shareholder approval when a 12b–1 plan is adopted or is amended to increase materially the amount to be spent for distribution,[244] and thus in this regard our proposal would not significantly change the rights of fund shareholders or the obligations of funds and fund underwriters. Fund directors would not (as discussed above) be specifically required by the rule to approve the fees, although fund directors may determine to solicit proxies in support of (or in opposition to) the imposition of the fee or an increase in the fee.

Ongoing Sales Charge. Ongoing sales charges would be treated differently, however. Under the proposed amendments to rule 6c–10, a fund would not be permitted to institute, or increase the rate of, an ongoing sales charge, or lengthen the period before shares automatically convert to another class of shares that does not incur an ongoing sales charge, after any public offering of the fund's voting shares or the sale of such shares to persons who are not organizers of the fund.[245] A new fund (*i.e.,* a fund that has not made a public offering), or an existing fund with respect to a new class of shares, would not need to obtain shareholder approval before instituting a marketing and service fee or an ongoing sales charge (because no shareholders that are not affiliated with the fund's sponsor

[238] This proposal is consistent with proposed amendments to rule 10b–10 that we made in 2004 in conjunction with proposed rule 15c2–12. *See* note 219, *supra.* We received no comments on this aspect of the proposal. At that time, we also proposed to amend rule 10b–10 to require broker-dealers that effect transactions in callable preferred stock to disclose to their customers that the stock may be repurchased at the election of the issuer and that additional information is available upon request. We are not reproposing that amendment at this time, but will continue to consider the need for such a requirement.

[239] *See* proposed paragraph (a)(6)(i) of rule 10b–10.

[240] Consistent with that deletion, we also propose to redesignate paragraphs (e)(1)(i) through (e)(1)(iv) as paragraphs (e)(1) through (e)(4).

[241] *See* proposed rule 12b–2(b)(2).

[242] Under the proposed rule, shareholder approval would only be necessary with respect to the class or series affected by the fee increase.

[243] *See* section 1(b)(1) of the Act, which provides, in relevant part, that "the national public interest and the interest of investors are adversely affected—(1) when investors purchase * * * securities issued by investment companies without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities. * * *"

[244] Rules 12b–1(b)(1) and (b)(4).

[245] *See* proposed rule 6c–10(b)(3).

would be affected).[246] However, after the fund or class has been sold to the public, an ongoing sales charge would not be permitted to be instituted or raised with regard to that fund or class.

We believe that ongoing sales charges should not be instituted or increased in existing funds, or lengthened in duration, regardless of shareholder approval. The current regulatory framework does not allow for sales charges to be retroactively imposed or increased with regard to prior investments, and we believe that permitting increases in ongoing sales charges in existing share classes would negatively impact investors. Shareholders may select a fund in part based on the level of the ongoing sales charge, if any, and the level of services they received from the intermediary receiving the ongoing sales charge. Under the proposed rules, an institution or increase of an ongoing sales charge after a shareholder has agreed to pay a defined cumulative ongoing sales charge would be akin to retroactively renegotiating the terms of the contract without the explicit consent of the particular shareholder affected.

We request comment on the shareholder approval requirements.

• Should we require shareholder approval to institute or increase a marketing and service fee? Would permitting funds to institute, increase, or lengthen the period of ongoing sales charges negatively impact investors? Should we permit shareholder approval to institute, or increase the rate of, an ongoing sales charge, or lengthen the period before shares automatically convert to another class of shares that does not incur an ongoing sales charge? Should the rule specify who should bear the cost of soliciting shareholder proxies to approve or increase the rate of an asset-based distribution fee? If so, should the fund or the fund underwriter bear the cost?

G. Application to Funds of Funds

We propose provisions in both rules 12b–2 and 6c–10 that would address asset-based distribution fees that could be deducted when one fund (the "acquiring fund") invests in shares of another (the "acquired fund"). Section 12(d)(1)(A) of the Act, our rules, and the NASD sales charge rule currently include provisions that restrict the layering of sales loads, asset-based sales charges and service fees in so called fund of funds arrangements, in which one investment company invests in the shares of another.[247] As described further below, we would include similar provisions to restrict the layering of marketing and service fees and ongoing sales charges in the amendments we are today proposing.

1. Marketing and Service Fee

Proposed rule 12b–2 would permit both an acquiring fund and an acquired fund in a fund of funds arrangement to charge a marketing and service fee, as long as the total of the fees charged by the funds together does not exceed the NASD service fee limit (25 basis points).[248] Thus, under proposed rule 12b–2(b)(2), if an acquiring fund deducts a marketing and service fee of 10 basis points, it would be limited to investing in other funds that deduct a marketing and service fee of no more than 15 basis points. This is the same approach as that taken by the NASD sales charge rule, which limits a fund of funds to a combined service fee of 25 basis points, and which limits a fund of funds that wishes to hold itself out as a no-load fund to combined service fees and asset-based sales charges (12b–1 fees) of 25 basis points.[249]

We request comment on our approach to applying rule 12b–2 to fund of funds arrangements.

• Should we, instead, preclude either acquiring funds or acquired funds from charging a marketing and service fee rather than cumulating the amounts? In the case of an acquiring fund investing in multiple acquired funds charging different marketing and service fee rates, should the rule's limits apply to the weighted average of the marketing and service fees rather than the maximum fee?[250] Would this be feasible? If so, how often should the acquiring fund determine such a weighted average for purposes of complying with the limits on marketing and service fees in proposed rule 12b–2? What other methods could be used to ensure that

[246] Similar to rule 12b–1, a fund would not be required to obtain shareholder approval for marketing and service fees or ongoing sales charges that are implemented prior to the sale of fund shares to the public. Rule 12b–1(b)(1). *See also supra* note 41.

[247] Section 12(d)(1)(A) of the Act prohibits a registered investment company (and any investment companies it controls) from: (i) Acquiring more than 3 percent of the outstanding voting securities of any other investment company; (ii) investing more than 5 percent of its total assets in any one acquired investment company; or (iii) investing more than 10 percent of its total assets in all acquired investment companies. Section 12(d)(1)(B) prohibits a registered open-end investment company (*i.e.* an acquired fund) from: selling securities to any acquiring investment company if, after the sale the acquiring investment company (together with investment companies it controls) would (i) own more than 3 percent of the acquired fund's outstanding voting securities or (ii) together with other acquiring investment companies (and investment companies they control) own more than 10 percent of the acquired fund's outstanding voting securities. Section 12(d)(1)(F) of the Act provides an exemption from the limitations of section 12(d)(1) that allows a registered investment company to invest all its assets in other investment companies if, among other things, the sales load charged on the acquiring investment company's shares is no greater than 1.5 percent. Rule 12d1–3 allows acquiring investment companies relying on section 12(d)(1)(F) to charge sales loads greater than 1.5 percent provided that the sales charges and service fees charged with respect to the acquiring investment company's securities do not exceed the limits of the NASD sales charge rule applicable to funds of funds. Rule 12d1–3(a). The NASD sales charge rule requires funds of funds to aggregate sales charges and services fees paid by both the acquiring and acquired funds in complying with its limits. *See* NASD Conduct Rule 2830(d)(3).

Section 12(d)(1)(G) provides a similar exemption that permits a registered open-end fund or UIT to acquire an unlimited amount of shares of registered open-end funds and UITs that are part of the same "group of investment companies" as the acquiring fund. The provision is available only if either: (i) The acquiring fund does not pay (and is not assessed) sales loads or distribution related fees on securities of the acquired fund (unless the acquiring fund does not itself charge sales loads or distribution related fees); or (ii) the aggregate sales loads or distribution related fees charged by the acquiring fund on its securities, when aggregated with any sales load and distribution related fees paid by the acquiring fund on acquired fund securities, are not excessive under rules adopted under section 22(b) or 22(c) of the Act by a securities association registered under section 15A of the Exchange Act, or the Commission. The NASD has adopted limits on sales loads and distribution related fees applicable to funds as well as to funds of funds. *See* NASD Conduct Rule 2830. *See also* Section II.C.1 of this Release.

Under the NASD sales charge rule's provision for funds of funds, if neither the acquiring nor acquired investment company has an asset-based sales charge (12b–1 fee), the maximum aggregate sales load that can be charged on sales of acquiring investment company and acquired investment company shares cannot exceed 8.5 percent (or 7.25 percent if the company pays a service fee). *See* NASD Sales Charge Rule 2830(d)(3)(A). Any acquiring or acquired investment company that has an asset-based sales charge must individually comply with the sales charge limitations on investment companies with an asset-based sales charge, provided, among other conditions, that if both companies have an asset-based sales charge, the maximum aggregate asset-based sales charge cannot exceed 75 basis points per year of the average annual net assets of both companies; and the maximum aggregate sales load may not exceed 7.25 percent of the amount invested (or 6.25 percent if either company pays a service fee). *See* NASD Conduct Rule 2830(d)(3)(B). The rule is designed so that cumulative charges for sales related expenses, no matter how they are imposed, are subject to equivalent limitations. *See* 1992 NASD Rule Release, *supra* note 66, at text accompanying n.9. *See also* NASD Notice to Members 99–103 (Dec. 1999) (*http://www.finra.org/RulesRegulation/NoticestoMembers/1999NoticestoMembers/P004026*) ("We have amended the [sales charge rule] to ensure that, if both levels of funds in a fund of funds structure impose sales charges, the combined sales charges do not exceed the maximum percentage limits currently contained in the rule.").

[248] Proposed rule 12b–2(b)(2).

[249] NASD Conduct Rule 2830(d)(3)(C).

[250] *See* proposed rule 12b–2(b)(2). We understand that the NASD sales charge rule's limits on cumulative service fees and asset-based sales charges (for no-load funds) does not permit weighted averaging, and thus applies the maximum rate as would our proposed rule. *See* NASD Conduct Rule 2830(d)(3).

shareholders in funds of funds do not pay excessive fees under proposed rule 12b–2?

2. Ongoing Sales Charges

We are also proposing that an acquiring fund and an acquired fund could not both charge an ongoing sales charge. Under proposed rule 6c–10(b)(1)(iv), an acquiring fund that relies on the rule to deduct an ongoing sales charge could not acquire the securities of another fund that imposed an ongoing sales charge.[251] An acquiring fund that did not charge an ongoing sales charge would not be subject to this restriction and would therefore be free to invest in funds imposing an ongoing sales charge.

We understand that the classes of shares of most acquired funds do not carry 12b–1 fees or, if they do, carry a 12b–1 fee of less than 25 basis points. We also understand that when funds do acquire shares of other funds with a sales load or 12b–1 fee, they often do not charge loads or 12b–1 fees themselves.[252] Thus, if our proposal were adopted, we do not expect that it would affect the structure or operation of most funds of funds.

- We request comment on our understanding, and how our proposal would affect funds of funds.

Our approach to applying proposed rule 6c–10(b) to funds of funds is not the same as the approach taken by the NASD sales charge rule, which permits asset-based sales charges at both levels but requires the rates to be accumulated in determining compliance with the relevant limits.[253] We have not taken this approach because it would involve substantial complexities when an acquiring fund invests in (and over time purchases and sells) multiple acquired funds (with different ongoing sales charges) that would have to be factored into the length of conversion periods that would be required by proposed rule 6c–10(b).

- We request comment on this proposed approach. We request that commenters who favor an approach that would require accumulating of ongoing sales charges (rather than restricting ongoing sales charges on either the acquiring or acquired fund), address how accumulation might work in a way that is not unduly complicated.

H. Application to Funds Underlying Separate Accounts

Our proposed rule and rule amendments would apply to funds that serve as investment vehicles for insurance company separate accounts that offer variable annuities or life insurance contracts.[254] Separate accounts are typically organized as unit investment trusts.[255] They invest the proceeds of premium payments made by contract owners in one or more mutual funds (underlying funds) that manage the assets that support the insurance contracts.

Owners of variable insurance contracts may pay substantial distribution costs[256] in the form of a front-end load, a contingent deferred load, or ongoing charges that are deducted from the assets held by the separate account, or a combination of these charges.[257] In addition, directors of some underlying funds have approved adoption of rule 12b–1 plans to support various distribution and shareholder servicing activities.[258] We understand that in most cases these charges do not exceed 25 basis points annually.

Under our proposed rule changes, underlying funds would be treated like other mutual funds. Thus, an underlying fund could charge a marketing and service fee up to the NASD sales charge rule limit on service fees. Asset-based distribution fees in excess of the marketing and service fee would be deemed ongoing sales charges and subject to the requirements of the proposed amendments to rule 6c–10. Like other mutual funds, in order to impose an ongoing sales charge under proposed rule 6c–10(b), an underlying fund (or the insurance company sponsor) would have to keep track of share lots attributable to contract owner purchase payments, and provide for the automatic conversion of shares by the end of the conversion period. We understand that insurance company separate accounts may not currently track and age shares because they generally do not offer underlying funds with contingent deferred sales loads. Under our proposal, insurance companies would either have to develop this capability or offer only shares of classes that do not impose an ongoing sales charge.[259]

We request comment on whether we should treat underlying funds differently than other funds.

- Given that most distribution activities occur at the separate account-level, is it appropriate to permit underlying funds to impose the marketing and service fee or ongoing sales charges?[260] How would these fees be used? Should we limit underlying funds to the marketing and service fee? Should we consider some other structure for limiting fees charged by underlying funds?

I. Proposed Amendments to Rule 6c–10: Account-Level Sales Charge

We are also proposing to amend rule 6c–10 to provide funds with an alternative approach to distributing fund shares through dealers if the fund so chooses.[261] Under the proposed

[251] An acquiring fund would determine its ongoing sales charge as the amount it deducts from fund assets in excess of its marketing and service fee, without regard to any acquired fund's marketing and service fee. Proposed rule 6c–10(d)(11).

[252] *See, e.g.,* New Century Portfolios, Prospectus at 18 (*http://www.newcenturyportfolios.com/Documents/Prospectus%203.01.09%20-%20New%20Century%20Portfolios%20Final.pdf*) (acquiring funds do not charge a sales load, and 12b–1 fees for the five series range from 0.10% to 0.22%).

[253] NASD Rule 2830(d)(3)(B)(ii).

[254] *See* section 2(a)(37) of the Act (defining "separate account").

[255] *See* section (4)(2) of the Act (defining "unit investment trust"). *See, e.g.,* Wendell M. Faria, Variable Annuities & Variable Life Ins. Reg. § 3:4.2 (Dec. 2009) ("[P]ractically all separate accounts are organized as unit investment trusts under a two-tier structure in which the separate account invests in an affiliated or unaffiliated underlying fund (or funds) organized as an open-end management investment company.").

[256] The FINRA sales charge rules do not place a maximum sales charge limitation on variable contracts. *See* NASD Notice to Members 99–103; Order Granting Approval of and Notice of Filing and Order Granting Accelerated Approval of Amendments Nos. 4, 5, and 6 to the Proposed Rule Change Relating to Sales Charges and Prospectus Disclosure for Mutual Funds and Variable Contracts, Exchange Act Release No. 42043 (Oct. 20, 1999) [64 FR 58112 (Oct. 28, 1999)] (approving NASD rule change eliminating maximum sales charge limitations on variable contracts). Until 1996, section 27 of the Act effectively limited the amount of the sales load that could be charged on a variable contract. When Congress enacted the National Securities Market Improvement Act of 1996, it amended section 27 to provide an exemption for variable contracts. Public Law 104–290 (1996).

[257] *See* Goldberg and Bressler, *supra* note 52, at n.28 ("While variable insurance products, like mutual funds, did not pay distribution fees prior to the adoption of rule 12b–1, they paid mortality and expense charges. These provided a source of revenue to reimburse the insurance company for the portion of the sales commission not covered by a CDSL.").

[258] *See* Comment Letter of Sutherland, Asbill & Brennan, on behalf of the Committee of Annuity Insurers (July 19, 2007) (similar to traditional mutual funds, underlying funds charge 12b–1 fees to support activities such as promoting underlying funds to prospective contract owners, printing underlying fund prospectuses, and training and educating agents).

[259] We discuss this issue as it arises in the context of retirement plans in Section III.M.5 of this Release, *infra.* We discuss the potential costs of implementing a conversion feature in Section IV of this Release, *infra.*

[260] *See, e.g.,* Comment Letter of JoNell Hermanson (July 9, 2007) (urging elimination of 12b–1 fees for variable products because "12b–1 fees have become a 'shell game' for insurance companies and have allowed them to camouflage their profit margin as investment management fees.").

[261] Proposed rule 6c–10(c).

elective provision, a fund (or a class of the fund) could issue shares at net asset value (*i.e.,* without a sales load) and dealers could impose their own sales charges based on their own schedules and in light of the value investors place on the dealer's services. In effect, this exemption would allow the unbundling of the sales charge components of distribution from the price of fund shares, similar to the existing ETF distribution model. The proposed rule amendment is, among other things, designed to provide flexibility to fund underwriters and dealers, encourage price competition among dealers offering mutual funds and, ultimately, benefit fund investors.

1. Section 22(d): Retail Price Maintenance

Section 22(d) of the Investment Company Act prohibits mutual funds, their principal underwriters, and dealers from selling mutual fund shares to the public except at a current public offering price as described in their prospectus. Because mutual fund sales loads are part of the selling price of the shares,[262] this provision essentially fixes the price at which mutual fund shares may be sold because all dealers in a fund's shares must sell shares at the same sales load disclosed in the prospectus.[263] By requiring that all dealers sell shares of a particular fund to the public only at uniform prices as established by the fund, section 22(d) effectively prohibits competition in sales loads on mutual fund shares at the retail level.[264]

Our rules have provided limited exemptions from this provision, for example, by permitting funds to establish "scheduled variations" in sales loads that allow for volume discounts, although the amount and terms of these discounts must be uniform and set forth in their prospectuses.[265] Section 22(d) continues, however, to preclude dealers from competing with each other by establishing their own pricing schedules or negotiating different terms with their customers. Dealers may offer their customers a choice of alternate funds with differing sales loads; they may not, however, offer discounts on sales loads established by the funds whose shares they sell.

In enacting section 22(d) as part of the original Act in 1940, Congress gave funds authority to control their distribution to a degree denied most commercial enterprises by the federal antitrust laws.[266] The reasons Congress might have had to achieve such a result are unclear, due to the paucity of legislative history or other clear indications about Congress's intent when it adopted the provision.[267] Section 22(d) has been the subject of considerable debate because it tends to restrict rather than foster competition. Some, including roundtable participants and commenters, have identified section 22(d) as inhibiting competition and contributing to high distribution charges.[268]

Commenters have suggested a number of rationales for the enactment of section 22(d), including: (i) Eliminating certain "riskless" trading practices by fund insiders; (ii) preserving an orderly distribution of mutual fund shares; and (iii) protecting shareholders from price discrimination.[269] Regulatory and marketplace developments that have occurred since 1940, however, have addressed the rationales that have been attributed to section 22(d). The Commission addressed the harms of riskless trading abuse in 1968 when it adopted rule 22c–1, which requires the "forward pricing" of mutual fund shares.[270] The Supreme Court also found in 1975 that section 22(f) of the Act permits funds to manage any secondary market in fund shares and preserve an orderly distribution system.[271] Finally, as we noted in 1983 in connection with a rule proposal under section 22(d), the concern of unjust price discrimination among purchasers has been substantially dispelled by the results achieved from the unfixing of brokerage commission rates in 1975 after our adoption of rule 19b–3 under the Securities Exchange Act of 1934.[272] That rule prohibits

[262] *See also* section 2(a)(35) of the Act (defining "sales load" to mean "the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities").

[263] *See* Exemption from Section 22(d) to Permit the Sale of Redeemable Securities at Prices that Reflect Different Sales Loads, Investment Company Act Release No. 13183 (Apr. 22, 1983) [48 FR 19887 (May 3, 1983)] ("Rule 22d–1 Proposing Release") ("This section effectively prohibits price competition in sales loads on mutual fund shares at the retail level.").

[264] By its terms, section 22(d) only applies to principal underwriters and dealers in fund shares and does not apply to brokers. *See United States* v. *National Ass'n of Sec. Dealers, Inc.,* 422 U.S. 694, 715 (1975). The securities laws draw a distinction between dealers and brokers. Generally, a dealer buys and sells securities for its own account as part of a regular business; a broker acts as an agent by matching buy and sell orders between other investors. The same intermediary may act as either a broker or a dealer, depending upon the transaction. *See* 15 U.S.C. 78a–3(a)(4), (a)(5); 15 U.S.C. 80a–2(a)(6), (a)(11). Although section 22(d) only applies to principal underwriters and dealers in fund shares, funds also are able to maintain control over their distribution networks through share transfer restrictions permitted under section 22(f) of the Act. *See National Ass'n of Sec. Dealers, Inc.,* 422 U.S. at 729.

[265] *See* rule 22d–1; Exemption from Section 22(d) to Permit the Sale of Redeemable Securities at Prices that Reflect Different Sales Loads, Investment Company Act Release No. 14390 (Feb. 22, 1985) [50 FR 7909 (Feb. 27, 1985)]. We have also provided an exemption from section 22(d) for certain insurance company separate accounts, and in other circumstances. *See, e.g.,* rule 22d–2 under the Act.

[266] *See* the Sherman and Clayton Acts, 15 U.S.C. 1–7; 15 U.S.C. 12–27; 29 U.S.C. 52, 53. Although such restrictions on price competition would normally be a violation of the antitrust laws, section 22(d) provides antitrust immunity for such restrictions. *See National Ass'n of Sec. Dealers, Inc.,* 422 U.S. at 701 ("* * * § 22(d) of the Investment Company Act requires broker-dealers to maintain a uniform price in sales in this primary market to all purchasers except the fund, its underwriter, and other dealers. And in view of this express requirement, no question exists that antitrust immunity must be afforded these sales.").

[267] *See, e.g.,* Rule 22d–1 Proposing Release, *supra* note 263 ("[T]here is relatively little in the Act's legislative history to explain the purpose of section 22(d) * * *.").

[268] *See, e.g.,* Comment Letter of the Consumer Federation of America, *et al.,* (May 10, 2004) (File No. S7–09–04) ("The reality, however, is that while competition flourishes, that competition does not necessarily serve to benefit investors. In fact, in the broker-sold portion of the market, funds compete to be sold, not bought. When funds compete to be bought, they compete by offering a good product and good service at a reasonable price. When funds compete to be sold, they do so by offering generous financial incentives to the sales force. Far from benefiting investors, this reverse competition tends to drive costs up, not down, and it allows mediocre high-cost funds to survive, and even thrive. The primary reason investors are being denied the benefits of competition is the legal requirement that funds set the compensation that brokers are paid for the services that those brokers provide to the investor."); Roundtable Transcript, *supra* note 109, at 103 (Thomas Selman, FINRA) ("One [area in need of revisiting] is 22(d), the retail price maintenance provision in the '40 Act, which, for example, prohibits a broker-dealer from simply charging its own commission for the sale of a fund at NAV, like they would a stock. There is no reason, really, why that restriction still should be in place.").

[269] *See* Rule 22d–1 Proposing Release, *supra* note 263 at text accompanying nn.5–8.

[270] *See id.,* at section 1.b; Adoption of Rule 22c–1 under the Investment Company Act of 1940 Prescribing the Time of Pricing Redeemable Securities for Distribution, Redemption, and Repurchase, and Amendment of Rule 17a–3(a)(7) under the Securities Exchange Act of 1934 Requiring Dealers to Time-Stamp Orders, Investment Company Act Release No. 5519 (Oct. 16, 1968) [33 FR 16331 (Nov. 7, 1968)]. Rule 22c–1 requires that mutual fund purchases and redemptions be executed at the price next computed after receipt of the order. *See* rule 22c–1(a). The execution of transactions at prices previously computed (which had been permitted in the past) thus would violate rule 22c–1, in addition to other applicable provisions such as anti-fraud provisions. *See, e.g., In the Matter of Charles Schwab & Co., Inc.,* Investment Company Act Release No. 26595 (Sept. 14, 2004) (settlement of a case where a broker-dealer permitted certain favored clients to submit "substitute" mutual fund trades past the 4 pm fund pricing deadline).

[271] *See United States* v. *National Ass'n of Sec. Dealers, Inc.,* 422 U.S. 694 (1975).

[272] *See* Rule 22d–1 Proposing Release, *supra* note 263, at section 1.b of Discussion.

national securities exchanges from requiring members to charge fixed brokerage commissions, and market experience after the rule showed that commission rates fell into rational patterns that reflect the sales costs involved and the services provided.[273]

As discussed in detail below, we are proposing an elective account-level sales charge alternative that would exempt certain funds from the requirements of section 22(d). We are proposing this account-level sales charge alternative pursuant to section 6(c) of the Act, which provides broad authority for the Commission to exempt any class of persons, securities, or transactions from the Act to the extent that such an 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 this title."[274] For the reasons discussed in this section and below, we anticipate that this proposed approach would expand the range of distribution models available to mutual funds, enhance transparency of costs to investors, promote greater price competition, and provide a new alternative means for investors to purchase fund shares at potentially lower costs. Thus, we believe that the account-level sales charge approach we are proposing today would be necessary and appropriate in the public interest, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Account-Level Sales Charges

Proposed rule 6c–10(c) would permit a fund in certain circumstances to offer its shares or a class of its shares at a price other than the current public offering price stated in the prospectus. A fund class could offer shares to dealers who would then be free to establish and collect their own commissions or other types of sales charges to pay for distribution. The amount of these fees (and the times at which they would be collected) would not be governed by the Act.[275] Thus, for example, this fee could be paid directly by the investor or could be charged to the investor's brokerage account, depending on the arrangement between the intermediary and investor. The intermediary could charge this fee at the time of sale, over time, or upon redemption.

This type of sales load arrangement would be similar to the "externalized sales charge" concept on which we requested comment in 2004,[276] and which was discussed extensively at our 2007 12b–1 roundtable.[277] In light of the many concerns raised by commenters, we are not proposing to require funds to externalize their distribution expenses.[278] Rather, we propose to make this available as an option for funds that so elect. The commissions or fees charged by the dealers to their customers could be determined in the same manner as commissions and fees charged on other types of financial products.[279]

We believe this alternative approach to distribution may be attractive to dealers, funds, and fund shareholders. Dealers offering an array of funds from different fund groups could sell each fund to their customers according to a single price schedule, which could take into consideration the volume of transactions with that dealer (rather than the size of the purchase of shares of the particular fund), the level and type of services provided, and the type of fund offered. Currently, investors pay the same costs for distribution when purchasing a fund, regardless of the quality or type of services provided by a dealer. Under our proposal, if the dealer and the fund elect to permit it, investors would be able to choose the level of dealer services they want and pay only for their chosen services. Investors might, for example, choose low-cost, low-service plans; high-cost, high-service plans; or something in between that better matches their preferences.

Such an approach could also simplify the operations of the dealer, which could process transactions based on a single, uniform fee structure. Such a structure could eliminate or reduce the need to educate employees (*e.g.,* broker-dealer representatives) on the myriad distribution arrangements offered in today's market, and help avoid mistakes that may harm customers and expose the dealer to liability when employees make errors.[280] And it could eliminate (or at least ameliorate) dealer conflicts

[273] *See id.;* Charles M. Jones & Paul J. Seguin, Transaction Costs and Price Volatility: Evidence from Commission Deregulation, 87 Amer. Econ. Rev. 728, 730 (1997) ("Evidence from Commission Deregulation").

[274] 15 U.S.C 80a–6(c). In addition to the authority granted us by section 6(c), section 22(d)(iii) of the Act provides an exception from retail price maintenance for sales made "in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 12." We are also proposing the account-level sales charge alternative pursuant to our authority in section 22(d)(iii), although for ease of reference we have included the proposed provision in rule 6c–10.

[275] Intermediaries registered with FINRA would continue to be subject to existing limits on excessive compensation under NASD Conduct Rules 2830 and 2440.

[276] *See* 2004 Rule 12b–1 Amendments Proposing Release, *supra* note 107. In particular, we asked comment on one approach of refashioning rule 12b–1 to provide that funds deduct distribution related costs directly from shareholder accounts rather than from fund assets. We received over 1700 comment letters in response to the release's request for comment, many of which presented alternatives and suggestions that warranted additional review. We deferred proposing any further changes at that time. *See* 2004 Rule 12b–1 Amendments Adopting Release, *supra* note 106, at section II.C.

[277] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 103 (Thomas Selman, FINRA), 157, 165 (John Hill, Putnam Funds), 204–07 (Richard Phillips, K&L Gates), and 207–13 (Avi Nachmany, Strategic Insight; Barbara Roper, Consumer Federation of America).

[278] Among other issues, commenters were concerned that requiring all funds to externalize their distribution systems would result in high transition costs, significant disruptions to current distribution systems, higher distribution costs for small investors, and adverse tax consequences. *See, e.g.,* Comment Letter of the ICI (May 10, 2004) (File No. S7–09–04); Comment Letter of the Financial Planning Association (May 10, 2004) (File No. S7–09–04). *See also* Roundtable Transcript, *supra* note 109, at 207–209 (Avi Nachmany, Strategic Insight). *But see id.* at 207 (Richard Phillips, K&L Gates). Some commenters objected to our requiring externalized distribution fees because they assumed that externalization would force shareholders to liquidate fund shares to pay the fees, which would cause investors to realize capital gains (or losses). *See, e.g.,* Comment Letter of Terry Curnes (May 3, 2004) (File No. S7–09–04); Comment Letter of Legg Mason, Inc. (May 10, 2004) (File No. S7–09–04). In most cases, however, intermediary-sold funds are held in accounts that have alternative sources of cash to pay distribution fees, *e.g.,* interests in a money market fund, the use of which would not result in adverse tax consequences to investors. *See* Egon Guttman, 28 Modern Securities Transfers § 4:15 (3d ed. 2009).

[279] The antitrust immunity provided by section 22(d) for the fund's other distribution channels, if any, would not be disturbed by this proposed exemption. *See, e.g.,* Rule 22d–1 Proposing Release, *supra* note 263 ("Since the proposed rule would exempt investment companies, principal underwriters, and dealers only to the extent and under such conditions as determined by the Commission to be consistent with the protection of investors, in the Commission's view, existing antitrust immunity afforded by section 22(d) would not be affected by the proposed rule.").

[280] On occasion, the complexity and variety of sales load arrangements has contributed to the failure of some intermediaries to provide their customers with the breakpoints to which they were entitled. Report of the Joint NASD/Industry Task Force on Breakpoints at 7 (July 2003) (*http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p006434.pdf)* ("Thus, a broker-dealer that sells funds offered by multiple mutual fund families must understand the aggregation opportunities offered by each fund family in order to deliver all appropriate breakpoint discounts to its customers. As broker-dealers increase the number of fund families whose funds they offer, fulfilling the obligation to understand the aggregation opportunities becomes an increasingly complex and burdensome task."). Another example of the difficulties that can arise from a multiplicity of differing fund policies and fees was brought to our attention when a number of intermediaries commenting on the redemption fee rule supported a uniform redemption fee as a means of eliminating the complexity associated with these fees. *See* Rule 22c-2 Adopting Release, *supra* note 103, at text following n.93.

that may lead them (or their employees) to recommend funds to customers based on the amount of the compensation received from selling the funds, rather than on the customer's needs.[281]

An externalized fee structure may appeal to some fund groups as well, including small funds and new entrants to the market that are eager to attract dealers that wish to sell shares based on their own fee schedules. Funds that choose to sell their shares only through an externalized fee structure could significantly simplify their operations and shorten their prospectuses by eliminating the need for multiple classes of shares.

Fund investors may benefit from buying funds through dealers that entered into these distribution arrangements in several ways. By reducing conflicts for dealers, these arrangements would reduce the risk that investors would be placed in funds that are not suitable for their particular circumstances. Sales charges would be more transparent and could be imposed or deducted in a manner and at a time that is most attractive to the investor.[282] Investors may be able to negotiate lower loads with their dealers by, for example, forgoing some of the services that they would otherwise pay for with the distribution charges, or by engaging in a substantial amount of business with the dealer (although not necessarily with the particular fund or fund family). Moreover, externalized fee structures may permit investors to invest in dealer-sold funds without purchasing associated (and unwanted) services. If negotiable account-level sales charges are accepted by market participants, increased competition among dealers may result in lower overall distribution costs or more attractive services for investors.[283]

Externalized fee arrangements are currently used in a number of other contexts and thus appear to be operationally feasible. For example, separately managed accounts and wrap accounts operate on an externalized distribution model.[284] In each case, at least part of the distribution costs is paid out of the assets of the account. As discussed above, recent years have seen the growing predominance of wrap accounts and other arrangements that entail separate fees paid by investors to intermediaries.[285] Some of the roundtable participants expressed concern that current externalized fee arrangements in other contexts (*e.g.* separately managed accounts and wrap accounts) tended to have higher rather than lower fees than mutual funds and thus may be disadvantageous to smaller investors.[286]

- Should this be of concern to us as we consider this rulemaking? Are those higher charges related to additional services and features that these products and accounts provide, and therefore not comparable to the externalized sales charge alternative we are proposing?

We request comment on the advantages and disadvantages of allowing an externalized alternative distribution model.

- Would fund investors benefit from this distribution model? If so, how would they benefit or otherwise be affected? Are there significant drawbacks to investors to permitting this distribution model and, if so, what are they? What competitive or anti-competitive effects could result from such a model? Would our proposed alternative distribution model allow investors to effectively choose among dealers for the right balance of price and service when buying mutual funds? How else might the availability of this distribution model affect investor behavior? We are interested in hearing from retirement plan administrators and trustees whether this distribution alternative might offer the beneficiaries of the plans increased transparency.
- We request comment on whether the availability of a class of fund shares that does not carry fixed distribution charges would increase competition among dealers and lead to lower sales charges for investors. Since 1975, when we abolished fixed brokerage commission rates, the cost of brokerage has decreased significantly for both institutional and retail brokerage customers.[287] Could we expect a similar result for fund investors if we permit retail price competition for at least some classes of shares of mutual funds?
- How would other market participants react to our proposed exemption? Would fund managers take advantage of this distribution model? Would competition among funds for the interest of dealers induce fund managers to offer a class of shares permitting dealers to control distribution pricing? Would discount broker-dealers begin offering funds that had previously been sold only through "full-service" brokers? Would "full-service" broker-dealers begin offering a class of the same shares at lower cost to their customers who, for example, bought and sold funds without the assistance of their representatives? Would dealers view our proposed exemption as providing an alternative that would help them reduce complexities and conflicts in selling fund shares? Would the exemption help reduce conflicts of interest by permitting dealers to eliminate differences in compensation and thus encouraging recommendations based solely on the best interests of their customers? If many funds rely on the proposed rule, what would be the effects on distribution arrangements, and on distributors that do not rely upon the rule?

3. Account-Level Sales Charges: Terms of Proposed Rule 6c–10(c)

The account-level sales charge alternative would be available to any fund with respect to all of its shares, or any class of its shares.[288] As we discussed above, the exemption is optional, and funds may choose not to take advantage of it and continue to distribute their shares only with sales charges established by the fund.

In order for a fund to rely on the section 22(d) exemption provided in proposed rule 6c–10(c), it would have to

[281] *See, e.g.,* Report of the Committee on Compensation Practices at 7 (Apr. 10, 1995) (*http://www.sec.gov/news/studies/bkrcomp.txt*) ("Some product sales or transactions offer much higher commission payouts to [registered representatives] than others. $10,000 invested in the typical front-end 'load' stock mutual fund, for instance, produces over twice as much immediate commission revenue to the registered representative as an equal amount invested in exchange-listed stocks."). *See also* Ruth Simon, *Why Good Brokers Sell Bad Funds,* Money, July 1991 (*http://money.cnn.com/magazines/moneymag/moneymag_archive/1991/07/01/86657/index.htm*).

[282] Some participants in our roundtable identified disadvantageous tax consequences as a reason for retaining asset-based sales charges rather than externalized sales charges. *See, e.g.,* Roundtable Transcript, *supra* note 109, 208–09 (Avi Nachmany, Strategic Insight). Under the proposed approach, however, investors purchasing through intermediaries could select a method of payment that would yield the best after-tax result for them.

[283] *See* Comment Letter of Bridgeway Funds, Inc., and Bridgeway Capital Management (July 19, 2007); *see also* Hannah Glover, *Schwab Slashes ETF Expenses in Challenge to Vanguard, BlackRock,* Ignites (June 15, 2010) (noting that ETF distribution model, which similarly permits the unbundling of the sales charge components of distribution from fund shares, has seen steady decreases in fees and commissions).

[284] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 76–78 (Martin Byrne, Merrill Lynch).

[285] *See supra* text preceding notes 97 and 98.

[286] *See, e.g.,* Roundtable Transcript, *supra* note 109. at 207–13 (Avi Nachmany, Strategic Insight; Barbara Roper, Consumer Federation of America). *See also* Comment Letter of the ICI (July 19, 2007); Comment Letter of Gary Roth (June 13, 2007); Comment Letter of Rick Sany (June 13, 2007). *But see* Comment Letter of Mark Freeland (June 19, 2007) ("But why should a mutual fund wrap account cost more if it is only providing the same level of service? Moreover, if the levels of service are indeed different, couldn't advisers create another tier of service for a lower fee, much as mutual fund wrap accounts typically charge less than equity wrap accounts?").

[287] *See, e.g.,* Evidence from Commission Deregulation, *supra* note 273.

[288] Proposed rule 6c–10(c).

meet two conditions. First, the fund (with respect to that share class) would not be permitted to impose an ongoing sales charge as defined in proposed amendments to rule 6c–10.[289] We are proposing the account-level sales charge as an alternative to an ongoing sales charge rather than as a supplement to it. The fund could, however, charge a marketing and service fee pursuant to proposed rule 12b–2.[290] Second, the fund would have to disclose in its registration statement that it has elected to rely on the exemption, which would allow interested investors the ability to better understand the distribution structure of the fund.[291] A fund relying on proposed rule 6c–10(c) would be permitted to use the marketing and service fee to support the fund's marketing and sales efforts, including advertising, sales material, and call centers, while permitting dealers to collect loads, fees, and other account-based charges to support the dealers' sales assistance and other services provided to its customers.

We request comment on all aspects of proposed rule 6c–10(c).

- Should we require that each fund class charge a marketing and service fee in order to rely on proposed rule 6c–10(c), or should a fund instead be able to offer a class of its shares in reliance on rule 6c–10(c) without charging such a fee? Alternatively, as we have proposed, should proposed rule 6c–10(c) be available to all funds, regardless of whether they use fund assets to finance distribution pursuant to proposed rule 12b–2? We also request comment on the condition that the fund class not deduct an ongoing sales charge pursuant to proposed rule 6c–10(b). Are there any circumstances under which a fund should be permitted to rely on the exemption under proposed rule 6c–10(b) and charge an ongoing sales charge under proposed rule 6c–10(c)?
- We request specific comment on whether the fund's election to rely on proposed rule 6c–10(c) should be disclosed anywhere other than the registration statement. We also request comment on where the fund's election should appear in the registration statement. As proposed, the election would be disclosed in the fund's Statement of Additional Information.[292] Should it appear in the fund's prospectus or summary prospectus? Should the fund's board be required to make or specifically approve the election?
- Are any other conditions appropriate? Should we limit the exemption to funds that sell their shares to dealers at net asset value? Are there any additional benefits or problems associated with proposed rule 6c–10(c)?
- We also request comment on the interaction between proposed rule 6c–10(c) and the other amendments we are proposing in this Release. For example, if the Commission does not adopt proposed rule 12b–2, proposed rule 6c–10(b) or the proposed rescission of rule 12b–1, should it nevertheless adopt proposed rule 6c–10(c)? Is any of the rationale that supports the Commission's adoption of rule 6c–10(c) diminished (or augmented) if the Commission does not adopt any of the other amendments it is today proposing?

J. Amendments To Improve Disclosure to Investors

We are proposing several amendments to our disclosure requirements to improve the transparency of sales loads and asset-based distribution fees. The amendments, which reflect the new approach we are proposing with respect to asset-based distribution fees, are designed to improve investors' understanding of the distribution related charges they would directly and indirectly incur as a result of investing in a fund.

1. Amendments to Form N–1A

Form N–1A is the registration form used by funds to register with the Commission under the Securities Act and the Investment Company Act. Item 3 of Form N–1A sets forth the requirements for the prospectus "fee table," which lists all fund expenses.[293] Rule 12b–1 fees currently are disclosed as a fund operating expense under the heading "Distribution [and/or Service] (12b–1) Fees."[294]

The reference in the current fee table to "12b–1 fees" is not, of course, consistent with the new regulatory approach we are proposing for asset-based distribution fees. Moreover, the current fee table may not present the fee most effectively. Many of our roundtable panelists, as well as a number of commenters on our summary prospectus rule, agreed that reference to an SEC rule number is not informative.[295]

To address these concerns, we are proposing to amend the fee table requirements to separate asset-based distribution fees into two component fees. Specifically, we propose to delete the current heading, and replace it with the heading "Ongoing Sales Charge," which would be the ongoing sales charge we are proposing today. This line item would continue to appear in the lower portion of the fee table which relates to the expenses that shareholders pay indirectly as a result of holding an investment in the fund, expressed as a percentage of net asset value.[296] We would also add a new subheading to the "Other Expenses" category called "Marketing and Service Fee."[297] Funds would include each of these line items in their fee tables only if they charge the relevant fee.[298]

The new heading and subheading correspond to our treatment of these charges under the new rule and rule

[289] Proposed rule 6c–10(c)(1).

[290] *See* proposed rule 12b–2(b).

[291] *See* proposed rule 6c–10(c)(2). The disclosure would appear in the fund's Statement of Additional Information ("SAI"). *See* proposed Item 25(d) of Form N–1A.

[292] Proposed Item 25(d) of Form N–1A.

[293] We recently amended Form N–1A to require key information to appear in plain English in a standardized order in mutual fund prospectuses, including information about the fund's investment objectives and strategies, risks, costs, and performance. In the same release, we also amended rule 498 under the Securities Act to allow a fund to satisfy its prospectus delivery obligations under section 5(b)(2) of the Securities Act by providing the summary prospectus, if the full statutory prospectus is available on an Internet Web site. *See* Enhanced Disclosure and New Prospectus for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] ("Summary Prospectus Adopting Release"). In the proposing release for the summary prospectus, we requested comment as to whether we should consider other revisions to the headings in the fee table to make them more understandable to investors, including eliminating the term 12b–1. *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28064 (Nov. 21, 2007) [72 FR 67790 (Nov. 30, 2007)] ("Summary Prospectus Proposing Release"). However, in the Summary Prospectus Adopting Release, we concluded that it was more appropriate to consider these changes in the context of a full reconsideration of sales charges and rule 12b–1. *See* Summary Prospectus Adopting Release at text accompanying n.126.

[294] *See* Item 3 of Form N–1A.

[295] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 106 (Bob Uek, MFS Funds). S*ee also* Comment Letter of The Honorable Donald Manzullo (Feb. 28, 2006) (File No. S7–28–07) ("In keeping with the idea of simplified disclosures, a preferential way to begin would be by re-naming the fees altogether, as the name '12b–1' is esoteric, at best.").

[296] The percentage of the maximum front-end and deferred sales loads would continue to be presented in the upper part of the fee table related to fees that are paid directly by shareholders upon entry to or exit from the fund.

[297] The fee table currently requires funds to disclose separately only two types of operating expenses—management fees (the fee paid to the investment adviser) and 12b–1 fees. The rest of a fund's operating expenses are included under the caption "other expenses." The instructions permit funds to subdivide this caption into no more than three sub-captions that identify the largest expense or expenses comprising "other expenses," but the fund must include a total of all "other expenses." *See* Instruction 3(c) to Item 3 of Form N–1A.

[298] Instruction 1(c) to Item 3 of Form N–1A.

amendments we are proposing today,[299] and are designed to more clearly describe the fees to investors.[300] In particular, the "Ongoing Sales Charge" heading should better convey to investors that this portion of the asset-based distribution fee operates as a substitute for a sales load. When this heading is used in a prospectus offering multiple classes with adjacent fee tables, investors may be more likely to understand the nature of the alternatives available to them. We view greater investor understanding of this fee as an important goal of this rulemaking, and expect that it would lead to more informed decisions by investors when selecting among funds and fund share classes.

Today, some funds may pay for certain services (*e.g.,* sub-accounting fees to a retirement plan administrator) in the form of a "rule 12b–1 fee," while others pay for the same service as an ordinary fund operating expense and account for the expense as "other expenses" in the operating expenses portion of the current fee table.[301] Similarly, under our proposed approach, some funds are likely to treat expenses for the same service as a "marketing and service fee" or "other expenses." Different approaches to the same fees do not affect the comparability of fund expense ratios, but will affect the subcategories of the fee table. Because of the various uses and purposes of the charges that may be included as marketing and service fees under our proposal, we believe disclosure of this fee would fit best as a subheading to the "other expenses" category. We believe that it is important for investors to know whether a fund charges a marketing and service fee, but do not believe it requires its own heading in the fee table.

We request comment on the proposed location for the marketing and service fee disclosure in the fee table.

- Does including the marketing and service fee in the "other expenses" category raise any concerns that it may obscure the fact that all or a portion of the marketing and service fee is or may be used for distribution purposes? If so, would it matter to most investors?
- We request comment on the two headings and the names that we have proposed for them.[302] Would they help investors better understand the nature of the fees? Are there better names we could use? Should we require the disclosure of additional categories of fees? Should we require that additional fee information be provided in the fee table? For example, should the fee table indicate fees paid initially, annually, and upon redemption? Should we also require that the conversion period for the ongoing sales charge be included in the fee table (or a footnote to the table), to provide investors with an immediate reference for how long the fee would be charged?
- We also request comment on our proposed use of the term "marketing and service fee." Is it too general a term to provide useful disclosure to investors? We are proposing this term instead of only the term "service fee" because funds could use the marketing and service fee for different activities than the "service fee" defined by the NASD, and because we are concerned that use of only the term "service fee" in some circumstances could mislead investors.[303] Should we permit funds that do not use the fees for distribution related purposes to use the term "service fee" in lieu of "marketing and service fee"? Would such an alternative diminish the comparability of fund fee tables and thus their usefulness to investors in comparing expenses among different funds? Would a different term, such as "sales and service fee" or "distribution and service fee" be more descriptive or informative to investors?[304]
- Finally, we request comment on fee table disclosure of asset-based distribution fees charged under existing 12b–1 plans, as permitted by proposed rule 12b–2(d).[305] Should Item 3 continue to require disclosure of "12b–1 fees" that are charged in the future?[306] Alternatively, should the 12b–1 fees be disclosed as marketing and service fees and ongoing sales charges, as appropriate? Should another term be used?

We also propose to amend Item 12(b) of Form N–1A, which currently requires funds that have adopted 12b–1 plans to disclose information about the operation of the plan in the prospectus.[307] Because funds would no longer be required to have a "plan," we are proposing to eliminate this requirement. Instead, we would require funds to disclose whether they charge a marketing and service fee or an ongoing sales charge and, if they do, to disclose the rates of the fees and the purposes for which they are used.[308] In addition, if the fund deducts an asset-based distribution fee for services provided to fund investors, it would need to describe the nature and extent of the services provided.[309] We would also require a fund that imposes an ongoing sales charge to disclose the number of months (or years) when the shares will automatically convert (to another class without the charge) and after which the shareholder would cease paying the charge.[310]

We would also require a fund offering multiple classes of shares in a single prospectus (each with its own method of paying distribution expenses) to describe generally the circumstances under which an investment in one class may be more advantageous than another class.[311] We understand investors often face difficulties when deciding which share class they should purchase because the advantages and disadvantages of each class are not

[299] *See supra* Sections III.C and III.D of this Release.

[300] A recent opinion issued by the Second Circuit emphasizes the importance of accurate description and categorization of fund fees to investors. The court noted that the full and accurate description of both the amount and use of fees charged by a fund is an important part of the "total mix" of information in an investor's decision to purchase shares. *See Operating Local 649* v. *Smith Barney Fund Management LLC,* 595 F.3d 86 (2d Cir. 2010) ("Few facts would likely constitute more important ingredients in investors' 'total mix' of information than the fact that, in violation of these disclosure requirements the expenses categorized as transfer agent fees were not transfer agent fees at all * * *. The importance of the accurate reporting of categories of fees in prospectuses is obvious: A "comparative" fee table is not useful to an investor if the information in the table is incomplete or otherwise misleading * * *.").

[301] *See* Item 3 of Form N–1A.

[302] The Commission has long sought to find a descriptive term that both informs investors and accurately describes the fees deducted pursuant to a 12b–1 plan. In 1988, when we began requiring funds to disclose certain fee information in the form of a uniform fee table, fees deducted pursuant to a 12b–1 plan were simply listed as an annual operating expense called "12b–1 Fees." Consolidated Disclosure of Mutual Fund Expenses, Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192 (Feb. 4, 1988)]. This description of 12b–1 expenses was criticized as being uninformative, and in 1998 we made a number of amendments to Form N–1A, including renaming the "12b–1 Fee" heading as "Distribution [and/or Service] (12b–1) Fees." Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064, at text accompanying n.79 (Mar. 13 1998) [63 FR 13916 (Mar. 23, 1998)]. Similar to the approach we are proposing today, the hypothetical illustrative example that was a part of our summary prospectus proposal used separate headings (Distribution Fee and Service Fee) in the fee table. *See* Summary Prospectus Proposing Release, *supra* note 293.

[303] *See supra* note 100 and accompanying text.

[304] *See supra* text following note 161.

[305] *See infra* Section III.N.3 (treatment of "grandfathered" shares).

[306] *See* Item 3 of Form N–1A (requiring disclosure of "Distribution [and/or Service] 12b–1 Fees").

[307] This disclosure complements the information presented in tabular form in the fee table.

[308] Proposed Item 12(b) of Form N–1A.

[309] *Id.*

[310] For funds that choose the account-level sales charge alternative, existing regulatory provisions would generally require the delivery of similar information to investors in their confirmation statements. *See* rule 10b–10 under the Exchange Act [17 CFR 240.10b–10].

[311] Proposed Item 12(b)(2) to Form N–1A.

always clearly presented in the prospectus.[312] Although the differing fees and terms of each class currently are readily available, the actual consequences of the decision to purchase a particular class (in terms of overall loads paid, appropriate holding periods, *etc.*) may not be readily apparent. We believe that requiring funds to provide a clear description of the situations in which one class may be more advantageous than another would reduce shareholder confusion and simplify the investment decision making process, and we understand that some funds currently provide this type of disclosure.

We request comment on these proposed amendments to Item 12(b).

- Would the disclosure be useful to investors in identifying the appropriate class to purchase? Should we provide more specific disclosure requirements? If so, what should they be? Would funds have difficulties in providing this information?

We are also proposing to amend Item 19(g) of Form N–1A, which currently requires a fund to describe in detail the material aspects of its 12b–1 plans and related agreements, in the Statement of Additional Information (SAI). Under our proposals, funds would no longer be required to have written "plans" that are approved by the board of directors, and thus much of this item would no longer serve any purpose. We therefore propose to eliminate paragraphs 2 through 6 of Item 19(g).[313] Because these items relate to the specific operation of a 12b–1 plan that would no longer be required under our proposal, we believe that they should be removed.

- We request comment as to whether we should retain any of these parts of Item 19(g).

We believe that some of the other information required to be disclosed under Item 19(g) may continue to be useful to investors and the Commission. In particular, Item 19(g)(1) which includes a list of the principal activities paid for under the plan and the dollar amounts spent on each activity over the last year as a material aspect of a 12b–1 plan, may help investors to more clearly understand how the asset-based distribution fees they pay are used. We propose to amend Item 19(g) to eliminate references to the 12b–1 plan, and instead require disclosure of the principal activities paid for through asset-based distribution fees (both ongoing sales charges and marketing and service fees). As proposed, the amendment would not require disclosure of dollar amounts.[314]

We request comment on the proposed amendments to Item 19(g).

- Specifically, we request comment whether we should retain the disclosures required by Item 19(g)(1) as it currently exists, including the dollar amounts spent on each activity. Our proposal would remove this disclosure because we believe that the information is unlikely to be important to investors. Should these disclosure requirements be eliminated or retained? Should we require funds to disclose the percentage of fees spent on each type of activity instead? Are there any other activities that are not disclosed in Item 19(g) that should be disclosed under our proposal?

Finally, we propose to: (i) Amend Item 25 of Form N–1A to add a paragraph (d) requiring funds electing to rely on the exemption to section 22(d) of the Act provided by rule 6c–10(c) to state that the fund has made this election; and (ii) eliminate existing Item 28(m) of Form N–1A, which requires a registered fund to attach its rule 12b–1 plan and any related agreements as an exhibit to its registration statement. The exhibit would be unnecessary because proposed rule 12b–2 would not require a written plan, and funds that charge grandfathered fees would not be required to have a written plan.[315]

- We request comment on these proposed changes to Item 25 and Item 28(m) of Form N–1A.

2. Amendments to Schedule 14A

Our proposal would require funds to obtain shareholder approval before instituting or increasing the rate of marketing and service fees deducted from fund assets in existing share classes.[316] To obtain shareholder approval, funds generally have to solicit proxies from their shareholders, and those proxy solicitations must include sufficient information to allow shareholders to make an informed decision. Item 22(d) of Schedule 14A under the Exchange Act[317] requires funds to disclose information regarding any distribution plan adopted under rule 12b–1 and the fees paid under the plan when soliciting proxy votes for approval of any material change in that plan. This disclosure is designed to provide shareholders with relevant information regarding the distribution costs of the fund when they are voting on issues that impact their investment.[318] Our proposal would eliminate the need for a distribution plan as currently required by rule 12b–1, which would make much of the disclosure required in Item 22(d) of Schedule 14A no longer relevant. Therefore, we propose to amend Item 22(d) of Schedule 14A, as well as replace the term "distribution plan" used in Schedule 14A with the new defined term "Marketing and Service Fee."[319]

Although our proposal would not require a distribution plan, it would permit funds to continue to use fund assets for distribution related purposes. In addition, it would require fund shareholders to approve any institution of, or increase in the rate of, marketing

[312] FINRA has addressed, on numerous occasions, the responsibilities of its members in helping investors understand and evaluate the sales structures of different classes of funds. *See, e.g.,* Special Notice to Members 95–80 (Sept. 1995) (*http://finra.complinet.com/finra/display/display_content.html?rbid=1189&element_id=1159003637*). *See also* FINRA, *Understanding Mutual Fund Classes* (Jan. 14, 2003) (*http://www.finra.org/Investors/protectyourself/InvestorAlerts/MutualFunds/p006022*).

[313] Item 19(g)(2) requires a fund to disclose the relationship between the amounts paid to the distributor under a 12b–1 plan and the expenses it incurs. Item 19(g)(3) requires disclosure of any unreimbursed expenses incurred by the plan and carried over to future years. Item 19(g)(4) requires disclosure of any joint distribution activities with another fund and the method of allocating distribution costs (any joint arrangement between funds that implicates section 17(d) and rule 17d–1 would require the funds to apply for and obtain an exemption from the Commission prior to implementing the arrangement). Item 19(g)(5) requires disclosure of whether any interested person or director has a financial interest in the operation of the 12b–1 plan. Item 19(g)(6) requires disclosure of the anticipated benefits of the plan to the fund.

[314] We do not believe that disclosure of the actual dollar amount spent on these activities would be useful to investors because that figure would depend primarily on the size of the fund, and not the services purchased.

[315] *See infra* Section III.N.3 for a discussion of grandfathering funds and share classes. We also are proposing additional conforming, technical changes to other items of Form N–1A, including: Instruction 3(b) to Item 3; Item 26(b)(4); and Item 27(d)(1) (and Instruction 2(a)(i) to Item 27(d)(1)). These changes are necessary to delete references to rule 12b–1 and rule 12b–1 plans and add references to rules 12b–2(b) and (d) and to 6c–10(b) as the operative rules regarding asset-based distribution fees.

[316] Generally, as allowed by rule 12b–1 (and as our proposal would allow), most funds institute a marketing and service fee or an ongoing sales charge before a fund is offered for sale to the public. *See* rule 12b–1(b)(1); Section III.F of this Release. If a fund wishes to institute a new marketing and service fee after a public offering, or increase those fees, the fund would be required to disclose in the proxy the information discussed in this section of the Release. As discussed in Section III.F, funds may not increase or impose an ongoing sales charge in a share class of a fund after any public offering of the fund's voting shares or the sale of such shares to persons who are not organizers of the fund.

[317] 17 CFR 240.14a–101.

[318] *See* Amendments to Proxy Rules for Registered Investment Companies, Investment Company Act Release No. 19957 (Dec. 16, 1993) [58 FR 67720 (Dec. 22, 1993)] at section II.F.

[319] Proposed Item 22(a)(iii) of Schedule 14A would define "Marketing and Service Fee" to mean "a fee deducted from Fund assets to finance distribution activities pursuant to rule 12b–2(b)."

and service fees charged by the fund.[320] In order for fund shareholders to make appropriate and informed decisions, we believe that shareholders would continue to find information regarding the rate of marketing and service fees, the purposes of the fees, the reasons for any proposed increase, and the identity of certain affiliated recipients relevant to their voting decisions. Thus, we propose to leave these disclosures, which are currently required under Item 22(d), substantially unchanged.[321]

Because our proposal would not require any special action by the board of directors in approving marketing and service fees, we do not believe that information regarding the board of directors' consideration of these fees would be relevant to the shareholder voting decision. Therefore, we propose to eliminate the disclosure requirements in Item 22(d) regarding director involvement in approving asset-based distribution fees.[322]

We also propose to eliminate the current requirement that funds disclose in Item 22(d) the aggregate dollar amount of distribution fees paid by the fund in the previous year. When we initially discussed such disclosure in 1979, we envisioned that the disclosure of aggregate dollar amounts could be useful for shareholders who were being asked to renew a 12b–1 plan.[323] This information may have been useful for shareholders who were evaluating whether the expenditure of dollar amounts was helpful to address certain problems or circumstances that the 12b–1 plan addressed. In light of our current proposal to eliminate 12b–1 plans, however, and the fact that the aggregate dollar amount of marketing and service fees primarily reflects the rate of the fee and the size of the fund (information that is readily available elsewhere), we believe this information is unlikely to affect a shareholder's decision to approve an increase in a marketing and service fee. Thus, we propose to eliminate the requirement to disclose information regarding asset-based distribution fees in Item 22(d).[324]

We request comment on our proposed changes to Schedule 14A.

- Should we require disclosure of any other aspects of marketing and service fees in the proxy statement? Is information about the aggregate amount of marketing and service fees collected relevant and meaningful to investors? Should we include any requirement for disclosure of director involvement in the setting of marketing and service fees?

3. Request for Comment on Account Statement Alternative

The GAO previously suggested that the Commission consider requiring funds to disclose in account statements the actual dollar amount of fees and expenses that each shareholder directly or indirectly has paid as an investor in the fund.[325] Many commenters argued, however, that such an approach would be unduly costly and may not be helpful to shareholders.[326] We believe that our proposed amendments would improve transparency of distribution related expenses without requiring funds and intermediaries to incur the costs that these commenters have asserted are associated with account statement disclosures.[327]

- Is our assumption correct? Or should we pursue the recommendations made by the GAO and require account statement disclosure of the actual dollar amount of asset-based distribution fees? Would such account statement disclosure be helpful or useful to investors? Have technological advances permitted account statement disclosure to be provided to investors without undue costs?

K. Proposed Conforming Amendments to Rule 11a–3

Section 11(a) of the Act requires exchanges between funds to be based on the relative net asset values of the shares to be exchanged.[328] Rule 11a–3 provides a conditional exemption permitting funds and fund underwriters to charge a sales load on shares acquired in certain exchanges between funds within the same fund group. Among other things, the rule limits the total combined sales load that may be charged on shares that have been subject to an exchange (*i.e.,* all sales loads incurred on both the exchanged and acquired shares) to the highest sales load rate applicable to those shares (exchanged or acquired) in the absence of an exchange.[329] This provision is designed to give shareholders credit for all sales loads paid in connection with a purchase of fund shares, regardless of whether the sales load was paid with respect to the exchanged or acquired shares.[330]

As discussed above, our proposed amendments to rule 6c–10 would treat traditional sales loads and the sales charge component of existing 12b–1 fees, (*i.e.,* the ongoing sales charge) similarly under the Act.[331] Accordingly, we propose two changes to rule 11a–3 that would conform that rule with our general approach.

1. Credit for Ongoing Sales Charges Paid

Paragraph (b)(4) of rule 11a–3 requires that funds, in determining any sales load due upon an exchange, give shareholders credit (*i.e.,* reduce the amount of sales load charged on the purchase of new shares) for their previous payment of sales loads on the shares exchanged, but does not require funds to give shareholders credit for the payment of any rule 12b–1 fees. In order to ensure that shareholders are credited for all sales charges previously paid in connection with a purchase of fund

[320] *See* proposed rule 12b–2(b)(2).

[321] *See* Item 22(d)(1)–(3) of Schedule 14A; proposed Item 22(d)(1), (2) of Schedule 14A.

[322] *See* Item 22(d)(4) of Schedule 14A.

[323] *See* 1979 Proposing Release, *supra* note 33, at text accompanying n.37 ("If shareholders were being asked to vote on the renewal of a plan, it would appear appropriate to include as well the amount spent by the fund in the previous fiscal year, as a total dollar amount and as a percentage of average net assets during that period, and the benefits to the fund from such expenditures.").

[324] *See* Item 22(d)(2)(iii) of Schedule 14A. This information will continue to be available to investors in the financial statements that are included in annual and semi-annual shareholder reports. *See* Item 27 of Form N–1A (requiring the inclusion of financial statements required by Regulation S–X); 17 CFR 210.6–07 (Regulation S–X requirement that the statement of operations separately state management and service fees); proposed amendment to 17 CFR 210.6–07 (proposed requirement that Regulation S–X require the separate statement of "all fees deducted from fund assets to finance distribution activities" pursuant to rules 12b–2(b), (d) or 6c–10(b) under the Investment Company Act). In addition, directors will continue to review the amounts charged to funds in the course of their oversight of fund expenses.

[325] *See* GAO, Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition, *supra* note 130. *See also* Roundtable Transcript, *supra* note 109, at 221 (Richard Phillips, K&L Gates) ("[I]f you had [disclosure of 12b–1 fees] in dollars and cents terms, if you had it in the account statements * * * I think you would get a mutual fund investing public that is more sensitive to the issue of sales charge. And, over the long run, it would have a competitive effect of a more informed investing public.").

[326] *See, e.g.,* Comment Letter of the ICI (July 19, 2007); Comment Letter of W. Hardy Callcott (June 18, 2007). However, another commenter argued that account statement disclosure could provide useful information to shareholders. *See* Comment Letter of Access Data Corp. (July 19, 2007).

[327] We note that we have addressed this issue in part by requiring that prospectuses include an example of the costs an investor would pay on a hypothetical $10,000 investment in the fund. *See* Item 3 of N–1A.

[328] Section 11(a) of the Act makes it unlawful for a fund or its principal underwriter to make an exchange offer to the fund's shareholders or to shareholders of another fund on any basis other than the relative net asset values of the shares to be exchanged, unless the terms of the offer are approved by the Commission or comply with Commission rules governing exchanges.

[329] Rule 11a–3(b)(4).

[330] Offers of Exchange Involving Open-End Investment Companies and Unit Investment Trusts, Investment Company Act Release No. 15494, at text following n.28 (Dec. 23, 1986) [51 FR 47260 (Dec. 31, 1986)].

[331] *See supra* note 141 and accompanying text.

shares, we propose to amend rule 11a–3(b)(4) to require funds to also give shareholders credit for the payment of ongoing sales charges.

We request comment on our proposed treatment of ongoing sales charges in rule 11a–3.

• Are there reasons not to treat a sales load and an ongoing sales charge in the same way when determining the amount of sales load due upon an exchange? Should we require funds to also give credit for any marketing and service fee paid under rule 12b–2 when calculating the sales load due upon an exchange? Should we require funds to also give credit for any 12b–1 fees previously paid on the exchanged shares? If so, should we limit the credit to fees paid in excess of 25 basis points (*i.e.,* the asset-based sales charge component of 12b–1 fees)? Would our proposed amendments to rule 11a–3 result in significant operational difficulties? Is there a simpler or less costly method of accomplishing the goal of ensuring that investors receive credit for ongoing sales charges during rule 11a–3 exchanges than the approach we are proposing?

2. Deferred Sales Loads Upon Exchange

Rule 11a–3 prohibits funds from imposing a deferred sales load at the time of an exchange.[332] The provision was designed to remove the incentive for fund underwriters to induce shareholders to make exchanges in order to accelerate its collection of a deferred sales load.[333] Under the rule, a fund may not treat an exchange as a redemption for purposes of assessing a deferred sales load, and thus may impose a deferred sales load only when the acquired shares are ultimately redeemed.[334] When the deferred load is imposed, the fund must determine the amount of the deferred load by "tacking" (*i.e.,* adding) the time the shareholder held shares of the exchanged fund to the time the shareholder held shares of the acquired fund.[335] However, in determining the amount of the deferred load, a fund may toll (*i.e.,* exclude) the time the acquired shares are held if a new sales load is not charged upon the exchange and credit is given to the investor for any 12b–1 fees paid with respect to the acquired shares.[336]

We propose to modify the "tolling" provision of rule 11a–3 to permit funds, in determining the amount of deferred sales load due upon ultimate redemption, to provide credit only for the sales charge component of any asset-based distribution fee, *i.e.,* the ongoing sales charge. Because the marketing and service fee is not considered to be an alternative sales charge under our proposal, we would not require funds to give credit for such fees when determining the sales load payable upon an exchange. In addition, we propose to modify the rule to clarify that funds must provide credit for ongoing sales charges in terms of the cumulative rate of the ongoing sales charge previously paid rather than the amount of fees paid. As discussed previously, we understand that funds generally do not have the ability to track dollar amounts of 12b–1 fees that are attributable to individual shareholder accounts.[337] In addition, requiring that credit be given in terms of rates rather than dollar amounts would make rule 11a–3 consistent with the method of calculating maximum sales loads under rule 6c–10(b).[338]

• Should rule 11a–3 require funds to give shareholders credit for the payment of any marketing and service fee when relying on the tolling provisions? We request comment on any aspect of our proposed changes to rule 11a–3. Should rule 11a–3 operate in terms of dollar amounts instead of rates? Would it be difficult or costly for funds to comply with the new requirements? Is it difficult or costly for funds today to comply with the tolling provisions of rule 11a–3? Is our understanding correct that funds generally do not have the ability to track dollar amounts of 12b–1 fees? Would it be difficult or costly for funds to track these amounts?

L. Other Proposed Conforming Amendments

1. Rule 17a–8

Rule 17a–8 provides an exemption from section 17(a) of the Act to permit mergers of funds with certain of their affiliated persons, including other funds (affiliated funds), subject to certain conditions.[339] Among other requirements, the rule requires the board of the merging fund to have made certain determinations, the surviving fund to keep certain records, and the shareholders of the merging fund to approve of the merger.[340] The rule allows for affiliated funds to merge in the absence of a shareholder vote, if, among other conditions, the 12b–1 fees of the surviving company are no greater than the 12b–1 fees of the merging company.[341] This condition prevents 12b–1 fees from being instituted or increased as a result of a merger on which the acquired fund's shareholders have not had an opportunity to vote.[342] We propose to preserve this protection by amending rule 17a–8 to replace references to rule 12b–1 with references to rule 12b–2(b) or (d) and rule 6c–10(b).[343]

• We request comment on this proposed revision. Should we continue to permit affiliated funds to merge in reliance on this provision in light of our new approach to asset-based distribution fees and the different role that fund directors would have in overseeing these fees under our proposal? Is there another approach we should take in amending rule 17a–8 to conform with our proposal?

2. Rule 17d–3

When the Commission adopted rule 12b–1 in 1980, it also adopted rule 17d–3 because a fund's payments for distribution under a rule 12b–1 plan may involve it in a "joint enterprise" with an affiliated person that otherwise would be prohibited by section 17(d) of the Act and rule 17d–1 unless an application regarding the joint arrangement was filed with the Commission and granted by order.[344]

[332] Rule 11a–3(b)(3).

[333] *See* Rule 11a–3 Adopting Release, *supra* note 186, at text following n.28.

[334] Rule 11a–3(b)(5).

[335] *Id.*

[336] Rule 11a–3(b)(5)(i). The rule provides an analogous provision for acquired shares that have a CDSL. Rule 11a–3(b)(5)(ii). The rule recognizes that CDSLs typically are reduced over time to reflect amounts paid by investors indirectly through a 12b–1 plan. We reasoned that "if a shareholder is making any payments for distributions through a 12b–1 plan, those payments should be reflected in a commensurate reduction of the CDSL owed, [but] * * * tolling would prevent a shareholder from receiving credit for the 12b–1 payments made while holding the acquired shares. * * *" *See* Offers of Exchange Involving Registered Open-End Investment Companies and Unit Investment Trusts, Investment Company Act Release No. 16504, at text following n.35 (July 29, 1988) [53 FR 30299 (Aug. 11, 1988)] (revised proposal of rule 11a–3). Thus, rule 11a–3 permits tolling of the time the acquired shares are held only if "a credit is given to investors for any 12b–1 fees with respect to the acquired shares. * * *" Rule 11a–3 Adopting Release, *supra* note 186, at text accompanying n.35.

[337] *See supra* note 170 and accompanying text.

[338] *See supra* Section III.D.1 of this Release.

[339] "Affiliated person" is defined in section 2(a)(3) of the Act.

[340] *See* rule 17a–8(a)(2), (a)(5), and (a)(3), respectively.

[341] Rule 17a–8(a)(3)(iv).

[342] Investment Company Mergers, Investment Company Act Release No. 25666 (July 18, 2002) [67 FR 48512 (July 24, 2002)].

[343] *See* proposed amendments to rule 17a–8(a)(3)(iv).

[344] *See* 1980 Adopting Release, *supra* note 23, at section titled "Proposed Rule 17d–3" (rule 17d–3 was adopted in the same release as rule 12b–1). Section 17(d) of the Act and rule 17d–1, in general,

Continued

The rule grants an exemption for funds to enter into agreements with certain affiliated persons and the fund's principal underwriter in connection with the distribution of its shares, provided that such an agreement is in compliance with rule 12b–1, among other requirements.[345]

We believe that under our proposed new rules, funds should continue to be afforded the exemption provided by rule 17d–3 with respect to distribution payments made to certain affiliated persons and the principal underwriter, so long as those payments are consistent with the conditions set forth in proposed rule 12b–2 and amended rule 6c–10.[346] We therefore propose to revise rule 17d–3(a) to replace the reference to 12b–1 with references to rule 12b–2(b), rule 12b–2(d) and rule 6c–10(b) in order to permit a fund to enter into an asset-based distribution fee arrangement with an affiliated underwriter.[347]

- We request comment on any aspect of this proposed revision. Would the revised role of directors in approving asset-based distribution fees under our proposal make this type of exemption less warranted? Is there another approach we should take in revising rule 17d–3 to conform with our proposal?

3. Rule 18f–3

Rule 18f–3 permits funds to offer multiple classes of fund shares. Section (f) of the rule permits funds to convert shares of one class to shares of another class after a specified period of time, provided that, among other things, the expenses (including 12b–1 fees) charged to the converted class are no higher than the expenses of the original share class. We believe that, under our proposed amendments, funds should continue to be able to convert shares under the same conditions. We believe that expenses attributable to proposed rule 12b–2 and proposed amendments to rule 6c–10 should be taken into account when making these conversions, much like rule 12b–1 expenses are today. We therefore propose that rule 18f–3(f)(ii) be amended to delete the reference to 12b–1 fees and replace it with references to fees under rule 12b–2(b), rule 12b–2(d) and rule 6c–10(b).[348]

- We request comment on any aspect of this revision. Is there another approach we should take in revising rule 18f–3 to conform with our proposal?

4. Forms N–3, N–4, and N–6

Form N–3 is the registration form used by insurance company separate accounts registered as management investment companies that offer variable annuity contracts. Instruction 2 to Item 7(a) requires separate accounts to disclose, among other things, the principal activities for which 12b–1 payments are made and the total amount spent under a 12b–1 plan in the most recent fiscal year, as a percentage of net assets. We believe that most of the information required to be disclosed by Instruction 2 to Item 7(a) would continue to be useful to investors and the Commission, and thus we propose to amend Instruction 2 to Item 7(a) to replace references to rule 12b–1 and 12b–1 plans with references to asset-based distribution expenses incurred under rule 12b–2(b), rule 12b–2(d) and rule 6c–10(b). The proposal would eliminate the requirement that registrants disclose the total amount spent in the most recent fiscal year (although this information would continue to be available in funds' financial statements), and would instead require registrants to provide a description of asset-based distribution fees. As discussed above, disclosure of the aggregate total of asset-based distribution fees may not be helpful to investors because it primarily reflects the size of the fund and not the distribution activities that are paid for with these amounts.[349] The proposal would retain the requirement that registrants list the principal types of activities for which asset-based distribution fees are charged.

As discussed above, under our proposals funds would not be required to have written "plans" that are supervised and approved by the board of directors. We therefore propose to eliminate paragraphs (ii) and (iii) of Item 21(f) because these items relate to the specific operation of a 12b–1 plan that would no longer exist under our proposal.[350]

- We request comment whether we should retain any of these parts of Item 21(f).

We believe, however, that the information required to be disclosed in paragraph (i) of Item 21(f), which requires registrants to disclose the manner in which amounts paid by the registrant under a 12b–1 plan were spent, would continue to be useful to investors and the Commission. This information may be relevant to an investor making an investment decision because it discloses the types of services the fund (and its investors) may receive in exchange for these fees. We propose to amend Item 21(f) to eliminate references to the 12b–1 plan, and instead require disclosure of the principal activities paid for through asset-based distribution expenses incurred under rule 12b–2(b), rule 12b–2(d) and rule 6c–10(b). For the reasons discussed above, we also propose to amend Instruction 5 to Item 26(b)(ii)[351] to delete any references to 12b–1 plans.[352] However, registrants would be required to provide the same information with respect to expenses and reimbursements accrued pursuant to rule 12b–2(b), rule 12b–2(d) and rule 6c–10(b).

- We request comment on any aspect of these proposed revisions to Form N–3.

We are also proposing to amend the fee tables in Forms N–4 and N–6, the registration forms used by insurance company separate accounts registered as unit investment trusts that offer variable annuity contracts and variable life insurance contracts, respectively. We propose to replace existing references to "distribution [and/or service] (12b–1) fees" with a new defined term, "asset-based distribution fees." We also propose to add new instructions that would define the term "asset-based distribution fee" as "all asset-based distribution fees paid under rule 12b–2(b), rule 12b–2(d), and rule 6c–10(b)."

- We request comment on these proposed revisions to Forms N–4 and N–6.

5. Form N–SAR

We are proposing to amend the instructions to Form N–SAR, the

prohibit an investment company from entering into a "joint enterprise or other joint arrangement or profit-sharing plan" (as defined in the rule) with any affiliated person or principal underwriter (or their affiliated persons) unless the Commission by order grants an exemption before the agreement goes into effect.

[345] The Commission stated that prior review and approval as required by rule 17d–1 would not be necessary if the safeguards of rule 12b–1 have already been applied to the arrangement. 1979 Proposing Release, *supra* note 33. The exemption does not extend to arrangements for the joint sharing of distribution costs by funds that are affiliates (or affiliates of affiliates) of each other (*e.g.,* mutual funds in the same fund complex). 1980 Adopting Release, *supra* note 23, at section titled "Proposed Rule 17d–3."

[346] We note that fund boards would continue to review and scrutinize arrangements involving asset-based distribution fees and ongoing sales charges, as discussed above. *See supra* section III.D.4.

[347] *See* proposed amendments to rule 17d–3(a).

[348] *See* proposed amendments to rule 18f–3(f)(ii).

[349] *See supra* note 323 and accompanying text.

[350] Item 21(f)(ii) requires a registrant to disclose whether any interested person or director has a financial interest in the operation of the 12b–1 plan. Item 21(f)(iii) requires disclosure of the anticipated benefits of the plan to the fund.

[351] Instruction 5 to Item 26(b)(ii) explains how registrants should include expenses related to 12b–1 fees in the calculation of their performance data.

[352] *See* proposed amendments to Instruction 5 to Item 26(b)(ii).

reporting form that is used by mutual funds for filing annual and semi-annual reports with the Commission.[353] Form N–SAR currently requires funds to answer a series of five questions about their 12b–1 plans in a yes/no or fill-in-the-blank format, which provides the Commission information regarding the use and amount of 12b–1 fees. The first of these questions asks a fund to state whether it has adopted a rule 12b–1 plan, and if the answer is "no," the fund need not answer the next four questions.[354] Because under our new approach funds would no longer be required to have 12b–1 plans, funds would answer "no" to the first question, and would not be required to respond to the remaining four questions. Under the proposed amended instructions, funds with share classes subject to a grandfathered 12b–1 plan (as discussed in Section N.3 below) would respond "yes" to the first question, and provide the information required in the remaining questions. Funds that do not have grandfathered 12b–1 plans would answer "no" to the first question, and would not be required to respond to the remaining four questions.

Although the operation of grandfathered 12b–1 fees would differ in certain ways from current 12b–1 fees if the proposal is adopted (primarily because there would no longer be board approval of a 12b–1 plan), those differences should not affect the disclosures required under Form N–SAR, and this information could continue to be useful to the Commission and investors.

• We request comment on our proposed changes to Form N–SAR. Should we delete the Form N–SAR questions related to 12b–1 plans entirely and not require funds with grandfathered share classes to answer the questions? Or should we amend the questions so that they apply not only to funds with a 12b–1 plan, but also to any fund with asset-based distribution fees pursuant to our proposed new rule 12b–2 and amended rule 6c–10? Is there a continuing need for the information to be disclosed in the questions related to 12b–1 plans in Form N–SAR if our proposal is adopted?

6. Regulation S–X

Mutual funds must include in their registration statements and shareholder reports the financial statements required by Regulation S–X.[355] As part of this requirement, mutual funds file a statement of operations listing their income and expenses.[356] Under the expense category, funds currently must state separately all amounts paid in accordance with a plan adopted under rule 12b–1.[357] We propose to delete the reference to rule 12b–1 and replace it with a requirement that funds list separately, in two line items in the statement of operations, the portion of this expense that represents marketing and service fees under proposed rule 12b–2(b), and the portion of this expense that represents ongoing sales charges under proposed amendments to rule 6c–10(b) or other fees under rule 12b–2(d).[358] Multiple-class funds would be permitted to disclose the marketing and service fees and ongoing sales charges incurred by each class either in the statement of operations or in a note to the financial statements, so that investors in each class would have an understanding of the expenses paid by their particular distribution arrangement. This change is designed to provide investors with information about marketing and service fees and ongoing sales charges in a fund's financial statements and is consistent with the proposed changes to the prospectus fee table.[359] In addition, funds that receive reimbursements relating to distribution would continue to report these reimbursements as a negative amount and deduct them from current 6c–10(b), 12b–2(b) or (d) expenses in the statement of operations.

• We request comment on the proposed amendments. Would listing ongoing sales charges in the statement of operations help investors understand that they are paying a sales charge as part of their investment in the fund? Should this information be presented in the statement of operations separately for each class of the fund? Is a note to the financial statement the appropriate place to provide this information? If not, where should we require disclosure of class-specific information? Should we also require that the conversion period for the ongoing sales charge be included in shareholder reports to provide investors with a regular reminder and reference for how long the fee would be charged?

M. Potential Impact of Proposed Rule Changes

Our rule proposals are designed to resolve many of the difficulties that investors, as well as fund directors, managers, underwriters, and intermediaries, have experienced with rule 12b–1 and 12b–1 fees over the years. We also recognize that, if adopted, our proposals would affect how some fund groups and their distributors conduct business. The benefits and potential impacts of the proposed rule changes on various market participants, which we summarize below, are also discussed further in the Cost-Benefit Analysis contained in Section V of this Release.

1. Fund Investors

Our proposals are designed to make it easier for fund investors to understand fund expenses. As a result, investors would be better able to select the fund or fund class that offers the combination of costs and services that is most advantageous for them. In addition, our proposals would provide for equivalent limitations on sales charges for shareholders who invest in a fund through a class of shares that charges front-end sales loads and those who choose to invest in a class of shares that bears an ongoing sales charge. We believe the proposals would yield investors two benefits. First, they would protect investors from the imposition of excessive sales loads, in furtherance of the goals of section 22(b) of the Act,[360] by limiting the cumulative amount of sales charges that an investor could bear directly or indirectly.[361] Second, they would promote a fairer allocation of distribution costs among investors who invest through different share classes by limiting the extent to which one class of shares (*e.g.,* class C shares) may bear these costs. In addition, the proposed rule amendments may lead to lower distribution costs if greater retail price competition develops.

Some investors wrote to us urging the elimination of rule 12b–1 as a way of reducing the cost of owning mutual funds.[362] Although one consequence of

[353] Mutual funds that have effective registrations statements for their shares under the Securities Act are required to file annual and semi-annual reports with the Commission on Form N–SAR under section 30(b) of the Act and rule 30b1–1.

[354] Item 40 of Form N–SAR.

[355] Item 27 of Form N–1A. Article 6 of Regulation S–X contains special rules applicable to the financial statements of registered investment companies. 17 CFR 210.6–01 *et seq.*

[356] Rule 6–07 of Regulation S–X contains the requirements for an investment company's statement of operations. 17 CFR 210.6–07. The statement of operations reports changes in a fund's net assets resulting from the amount of net investment income, net realized gains and losses on investments, and net unrealized appreciation or depreciation of investments.

[357] 17 CFR 210.6–07.2(f).

[358] Shares subject to grandfathering under proposed rule 12b–2(d) would continue to list asset-based fees as a single line item, as under current practices.

[359] *See supra* Section III.J of this Release.

[360] *See supra* note 20.

[361] *See infra* Section III.N.3 (discussing grandfathered share classes).

[362] *See, e.g.,* Comment Letter of Melvyn H. Mark (June 17, 2007); Comment Letter of Jack Thomas

Continued

the proposed rule amendments may be to reduce distribution costs, the elimination of asset-based sales charges would not eliminate the need to compensate fund intermediaries for fund distribution and for the other services they provide. Investors who do not want to pay 12b–1 fees have available to them a range of funds that do not charge these fees, although investors in these funds may pay distribution costs through other means. In recent years, expenses of funds as a group have begun to decline as more investors have sought funds with lower expenses, and as index funds and exchange-traded funds have become more popular with investors.[363] We believe that more transparent disclosure of fund expenses may help investors to better evaluate different fund options. This transparency also may lead to greater competition among funds and ultimately downward pressure on fund costs.

2. Fund Intermediaries and Distributors

We received comments from a large number of financial planners, broker-dealer representatives, and brokerage firm managers who expressed concern that the "trail commissions" or "service fees" they receive from the proceeds of 12b–1 fees might be cut off as a result of this rulemaking, and they could no longer provide ongoing services to their customers.[364] These proposals should address these concerns.[365] Approximately 80 percent of fund assets that are subject to 12b–1 fees are charged 12b–1 fees of 25 basis points or less. They therefore would not be subject to the portion of our rule proposals related to ongoing sales charges.[366]

Intermediaries that may be affected by our proposed rules are primarily broker-dealers that currently receive payments from the sale of classes of fund shares that pay 12b–1 fees that exceed 25 basis points (*e.g.,* class C shares). Under our rule proposals, funds could continue to pay broker-dealers 12b–1 fees at previously approved levels for grandfathered shares.[367] For shares issued after the compliance date, fund underwriters would likely reduce the stream of payments when the shares convert to a class that pays no more than 25 basis points of asset-based distribution expenses (*e.g.,* class A shares) or else find a different source of revenue to fund the payments. The amount of time before conversion would depend on the amount of sales load charged on the class A shares, *i.e.,* the reference load, and the rate of the ongoing sales charge (the amount of asset-based distribution fees that exceeds 25 basis points). Thus, for example, if a fund offers class A shares with a 5.25 percent front-end load and class C shares with an ongoing sales charge of 75 basis points, then the class C shares would have to convert no later than seven years from the time of purchase.[368] This consequence flows from the premise (discussed above) that amounts paid by funds in excess of the marketing and service fee are charged as an alternative to sales loads, and thus are properly limited by the NASD sales load caps.

Some commenters and roundtable participants described "level load" classes of shares as providing for an alternative to front-end or spread-load arrangements, and thus acknowledged them as a form of sales load designed to support distribution of fund shares.[369] Others, however, have asserted that the 12b–1 fees associated with level load funds (often 100 basis points) pay for valuable ongoing investment advice provided by the intermediary, and are an alternative to mutual fund wrap fee programs, which often charge a 100 basis point (or greater) wrap fee.[370] The use of fund assets to finance personal advisory services (rather than support fund distribution), however, raises issues regarding whether those advisory services provided by an intermediary to a customer years after the sale ought to be payable from fund assets. Such expenditures arguably do not relate to the operation of the fund or to the distribution of its shares.

- We request comment on these matters. Are asset-based distribution fees associated with level load share classes an efficient means to pay for ongoing investment advice?

With respect to level load share class arrangements, roundtable panelists and commenters raised questions regarding the applicability of the Investment Advisers Act of 1940 ("Advisers Act") [371] to intermediaries that receive those ongoing fees.[372]

- We request comment on these matters, and whether the conversion provisions of our proposed rules would appropriately address them by requiring a nexus between the sale of a share of a mutual fund and the amount of ongoing sales charges an intermediary's customer pays through the fund.

Finally, we note that our proposed relaxation of restrictions on retail price competition could provide fund intermediaries with greater control over the pricing of fund shares sold to their customers by permitting intermediaries to establish their own sales loads specifically tailored for their customers. This may result in greater competition

(June 19, 2007); Comment Letter of Weiwan Ng (June 19, 2007).

[363] *See, e.g.,* Fee Trends Report, *supra* note 22 (discussing the decline in expense ratios during the past 20 years, but noting that the expense ratios of stock funds and bond funds increased in 2009).

[364] *See, e.g.,* Comment Letter of Jill Shannon (Aug. 6, 2007); Comment Letter of Bernard Smit (Oct. 9, 2007); Comment Letter of Eric Connors (June 19, 2007)). *See also* Comment Letter Type A and Comment Letter Type B.

[365] *But see supra* notes 100 and 168 of this Release.

[366] According to industry statistics derived from Lipper's LANA Database analyzed by our staff, funds that charge 12b–1 fees have aggregate assets of $4.86 trillion, which we assume is the source of payments for trail commissions or services fees (or a combination) to intermediaries. 12b–1 fees of 25 basis points or less are charged on approximately 82 percent of these assets ($4.0 trillion).

[367] *See infra* Section III.N of this Release.

[368] We calculated the length of the conversion period by dividing the rate of the front-end load (5.25%) by the rate of the ongoing sales charge (0.75%).

[369] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 198–99 (Richard Phillips, K&L Gates) ("I think you have got to separate the 25 basis point service fee from the 75 basis point sales compensation fee, or broker's compensation fee. * * * The 75 basis point substitute for the front-end load * * * is pure sales compensation.").

[370] *See, e.g.,* Comment Letter of Gregory A. Keil (June 1, 2007) ("The current 'Class C' share is really the next step toward a more 'advice driven' model * * * removing a 'transaction cost' from the equation—and applying an "always-on" Advisory Fee to a DISCRETIONARY investment vehicle—the mutual fund. * * *"); Comment Letter of Daryl Nitkowski (July 19, 2007) ("In fact, I believe the typical 1% fee charged on class C shares represents the best option for clients who want continuing advice, but do not want to have a fee based account.").

[371] 15 U.S.C. 80b.

[372] Intermediaries that are broker-dealers are excluded from the definition of investment adviser under the Advisers Act with respect to advice they provide that is "solely incidental to the conduct of [their] business as a broker or dealer" and for which they receive "no special compensation." Section 202(a)(11)(C) of the Advisers Act [15 U.S.C. 80b–2(a)(11)(C)]. Some commenters asserted that broker-dealers receiving 12b–1 fees are ineligible for this exclusion. *See, e.g.,* Comment Letter of Ron A. Rhoades (June 18, 2007) ("It is clear from various comments recently submitted by broker-dealer firm registered representatives, as well as * * * industry representatives and the ICI, that 12b–1 fees are being utilized as 'special compensation' for advice which is ongoing * * * and which clearly cannot be considered incidental to the mutual fund sales transaction * * *. I would submit that the payment of 12b–1 fees for such purposes violates the Investment Advisers Act, when such fees are paid in connection with brokerage (not investment advisory) accounts."); Comment Letter of Harold Evensky (June 26, 2007). *See also* Roundtable Transcript, *supra* note 109, at 203 (Barbara Roper) ("The other thing I would just like to point out, having listened to today's discussion, this advice we're getting doesn't sound remotely like anything I would call solely incidental to product sales. And these fees sound a lot like special compensation for advice."). *See also* Beagan Wilcox Volz, *Class Action Firm Mounts Legal Attack on 12b–1 Fees,* Ignites (Apr. 9, 2010) (discussing recent lawsuits alleging that broker-dealers may not properly receive 12b–1 fees without registration as investment advisers).

among intermediaries and in particular may impact smaller broker-dealers that lack the distribution capacity and negotiating ability of larger broker-dealers. However, some smaller broker-dealers may use this alternative to create new pricing structures that permit them to better compete with larger broker-dealers.

• We request comment on the likely effects on competition that may result from our proposal, including the effects with regard to smaller broker-dealers.

3. Fund Managers and Principal Underwriters

Our proposals would largely preserve existing distribution arrangements, and should provide fund managers, directors, etc., with greater legal certainty regarding many distribution financing practices that have developed over the years.[373] In this regard, our proposals would respond to the many calls we have received from mutual fund managers and others to revise rule 12b–1 in a way that recognizes that 12b–1 fees are today a substitute for sales loads, and to eliminate the procedural requirements of the rule that they view as outdated.[374]

Today's proposals are designed to address the criticism of funds and fund managers expressed by investors, the academic community, and the financial press who argue that rule 12b–1 fees may not collectively benefit fund shareholders because they do not produce economies of scale and, in fact, operate to increase fund expense ratios.[375] We anticipate that the proposed rules, if adopted, would shift the focus from whether fund expenses are increased by a 12b–1 fee to whether the sales charges imposed by a particular fund are appropriate in light of the services provided by the intermediary. This is the issue we believe investors should be exploring before they decide to invest in a fund and pay sales charges.

4. Small Fund Groups

Some fund and broker-dealer industry participants expressed concern about the possible effects of changes to rule 12b–1 on smaller fund groups. Several asserted that use of fund assets to pay for distribution has played an important role in permitting smaller fund groups to compete with larger fund groups for the attention of intermediaries by permitting them to access a wide array of distribution networks.[376] Of particular importance to small funds is their continued ability to use fund assets to pay for participation in fund supermarkets,[377] which are an important means by which investors find smaller fund groups.[378] A number of studies of the role of brokers and fund supermarkets in selling shares of mutual funds offered by smaller fund groups appear to support these assertions.[379]

In developing our proposals, we have considered their potential effect on smaller fund groups. A representative of a smaller fund group participated in our roundtable discussion, and our staff met with representatives from other small fund groups to listen to their concerns and explore ways in which we might address them.

We believe that our proposal reflects consideration of the concerns small fund groups shared with us, and would preserve their ability to compete with larger fund groups. Based on an analysis of data collected from the Lipper LANA Database by our staff, we estimated that approximately 108 "small fund groups," offered 189 classes of fund shares to the public.[380] Our analysis found that of these classes, 166 (88 percent) either charged no 12b–1 fee or charged a 12b–1 fee of 25 basis points or less.[381] The remaining 23 classes (12 percent), under our proposal, would be required to comply with the limits on ongoing sales charges, reduce their distribution expenditures, or otherwise change their distribution arrangements. Alternatively, as discussed above, where non-distribution related expenses are now paid under 12b–1 plans, many funds may be able to allocate that portion of their existing 12b–1 fees to administrative expenses, and thus ensure that their asset-based distribution expenses fall within the limits of the 25 basis points marketing and service fee.[382]

Only 11 of the small fund groups (6 percent) offered class C shares, and fund assets attributable to these classes amounted to only $60 million of assets (0.2 percent of small fund group assets). Based on this data, we do not believe that our proposals would require many small funds to restructure their fund classes.[383]

• We request comment on the impact of our proposals on small fund groups. In particular, we request comment on the competitive impact of our rule proposals on smaller fund groups. Is

[373] One of the uncertainties involves whether fund boards can appropriately approve continuation of 12b–1 fees for funds that are no longer selling shares. *See* Standard & Poor's, *Closed Funds and 12b–1 Fees* (Aug. 2008) (*http://www2.standardandpoors.com/spf/pdf/index/concept_12B1-Fess&ClosedFunds.pdf*) (the existence of 12b–1 fees in funds closed to new investments may seem "counter-intuitive," but may be appropriate when viewed as a substitute for a sales load).

[374] *See supra* Section II.E.

[375] *See, e.g.,* Haslem, *supra* note 108; William Dukes et al., *Mutual Fund Mortality, 12b–1 Fees, and the Net Expense Ratio,* 29 J. Fin. Res. 235 (2006); Charles Trzcinka & Robert Zweig, *An Economic Analysis of the Cost and Benefits of SEC Rule 12b–1,* Monograph Series in Finance and Economics 67 (Leonard N. Stern School of Business, NYU) (1990). See also William P. Dukes & James B. Wilcox, The Difference Between Application and Interpretation of the Law as It Applies to SEC Rule 12b–1 Under the Investment Company Act of 1940, 27 New Eng. L. Rev. 9 (1992).

[376] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 67–68 (Mellody Hobson, Ariel Capital Management). *See also* Comment Letter of Thornburg Investment Management (July 19, 2007) ("[L]arge brokerage firms have increasingly become more open to using funds managed by independent advisors, rather than relying entirely on in-house managed products" because of compensation from 12b–1 fees); Comment Letter of the Securities Industry and Financial Markets Association (July 19, 2007) ("[A]vailability of 12b–1 fees makes smaller funds more attractive to larger intermediaries, and correspondingly smaller intermediaries, that do not enjoy the same economies of scale as larger ones, are able to support and offer a broader choice of funds for their clients"); Comment Letter of the ICI (July 19, 2007) ("[T]he ability of small funds to assess asset-based distribution fees has enabled these funds to remain competitive by allowing them to gain access to a wider array of distribution channels * * *").

[377] *See supra* note 96.

[378] *See* Comment Letter of Charles Schwab & Co., Inc. (July 16, 2007) ("Repeal of rule 12b–1 would undoubtedly restrict a fund's ability to rely on supermarkets and their superior infrastructure, and, in particular, we believe it would have a disproportionate impact on smaller and new funds that lack the resources outside of fund assets to pay for shareholder servicing.").

[379] Conrad S. Ciccotello *et al., Supermarket Distribution and Brand Recognition of Open-End Mutual Funds,* 16 Fin. Servs. Rev. 309 (Winter 2007) (*http://findarticles.com/p/articles/mi_qa3743/is_200701/ai_n25499878*) (fund families that are focused and smaller in size are more likely to rely on fund supermarkets for distribution); Xinge Zhao, *The Role of Brokers and Financial Advisors Behind Investments Into Load Funds* (August 2003) (*http://ssrn.com/abstract=438700*) (brokers and financial advisors are more likely than self-directed investors to allocate investment dollars to smaller funds).

[380] We are using, for purposes of our estimates, the definition of "small business" or "small entity" that we use for purposes of the Regulatory Flexibility Act [5 U.S.C. 601, *et seq.*]. Rule 0–10 under the Act defines a "small entity" for purposes of the Act as a group of related management companies (funds) that has net assets of $50 million or less as of the end of its most recent fiscal year.

[381] 111 classes (59 percent) do not have a 12b–1 plan in effect.

[382] *See supra* Section III.C of this Release. *See also* Roundtable Transcript, *supra* note 109, at 89 (Mellody Hobson, Ariel Capital Management) (explaining that Ariel funds may treat 15 basis points of a 40 basis point fund supermarket fee as a sub-transfer agent fee.).

[383] Our staff also evaluated the potential impact of our proposal on somewhat larger fund groups—those with less than $250 million of assets under management—and obtained similar results. This group consisted of 191 fund groups that offered 497 share classes. Of these classes, 397 (79.9 percent) carried no 12b–1 fee or a fee of 25 basis points or less. Only 22 of the 191 fund groups offered class C shares (11.5 percent), with total assets of approximately $400 million (3.5 percent of the assets of these fund groups). *See also* Section V.B of this Release.

this data correct? Should our rules treat small fund groups differently than larger fund groups?

5. Retirement Plans

Many investors invest in mutual funds through tax-advantaged retirement plans, such as 401(k) plans.[384] Some of these funds use fund assets to compensate plan administrators for services provided to plans and plan participants, including recordkeeping, sub-accounting, transaction processing, account maintenance services, and participant education.[385] Many of these payments essentially reimburse plan administrators for costs they incurred to provide services (such as shareholder recordkeeping) that typically funds would have to bear as operational expenses for direct accounts.[386] Other payments, in whole or in part, may be distribution related, and thus many funds today make them to plan administrators and financial intermediaries pursuant to a rule 12b–1 plan.[387] Different funds take different approaches to paying these expenses. Some funds may specifically identify operational costs and pay them outside of rule 12b–1.[388] Other funds might, for convenience, use 12b–1 fees to pay all of these expenses to avoid the need to determine exactly which of the expenses contribute to fund distribution.[389]

According to the Investment Company Institute, retirement plan assets are typically invested in low cost funds.[390] Approximately 80 percent of 401(k) plan assets are held in mutual fund share classes that pay no 12b–1 fees or 12b–1 fees of 25 basis points or less.[391] If our proposals are adopted, we would therefore expect that funds could continue to make the payments from the proceeds of the marketing and service fee.

Some funds with higher 12b–1 fees may identify a portion of those expenditures as not distribution related and treat them accordingly, and may thus be able to reduce their distribution related payments so that they do not exceed the limits of the marketing and service fee. As a result, these funds would not be subject to the ongoing sales charge limits discussed above. Other funds, however, may be required by our rule proposals to treat a portion of their 12b–1 fee as an ongoing sales charge and provide for a conversion period. We understand that many plan administrators currently do not track and age shares both because plan beneficiaries do not pay taxes on capital gains realized on sales of shares in retirement plans and because many (or most) plans do not offer share classes that impose CDSLs.[392] Plan administrators would have to either develop this capability, which most other intermediaries have, or offer only classes of shares that do not impose an ongoing sales charge, *i.e.,* classes of shares that carry an asset-based distribution fee of only 25 basis points or less.[393]

A small number of funds today issue a class of shares created especially for retirement plans, often called "R shares." R type shares typically carry a 12b–1 fee of 50 to 100 basis points that generates sufficient revenue to pay for a substantial amount of plan expenses. The Commission staff estimates that less than two percent of plan assets are invested in R shares.[394] Treating amounts deducted in excess of 25 basis points as an ongoing sales charge and eventually converting these shares may not be a viable option for retirement plans with R share classes because plan expenses are ongoing. Thus, our proposal would likely make R shares a less attractive investment option for plans to offer.

We request comment on the potential consequences of our rule proposals on R shares, and whether investors would be harmed.[395] We also note that public policy, as embodied in the securities laws we administer and the laws administered by other agencies, favors transparency of expenses.[396]

• Do R share classes subsidize significant plan expenses or obscure plan costs by bundling them with mutual fund costs? Are R shares most attractive to plan sponsors that either are unable or choose not to bear plan expenses as an employee benefit? Does this tend to obscure that plan participants are paying the costs themselves through their investments? Do payments to plan administrators from the proceeds of 12b–1 fees on R shares pay for services that may not be exclusively attributable to the funds in which those assets are invested? If so, then are fund assets potentially being used to pay for services to non-fund investors (*i.e.,* not for exclusive benefit of fund investors)?[397]

[384] According to data compiled by the ICI, 36 percent of long-term mutual fund assets were held in tax-advantaged retirement plans as of the end of 2009. *See* 2010 ICI Fact Book, *supra* note 6, at 112.

[385] *See* Comment Letter of The Spark Institute, Inc. (July 17, 2007).

[386] *See* Roundtable Transcript, *supra* note 109, at 79 (Charles P. Nelson, Great-West Retirement Services).

[387] *See* Deloitte Consulting LLP, Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of What Drives the 'All-In' Fee (Spring 2009—updated June 2009) (conducted by Deloitte Consulting LLP for the ICI) (*http://www.ici.org/pdf/rpt_09_dc_401k_fee_study.pdf*) (noting portions of the distribution fee may be used to compensate financial intermediaries and service providers for services provided to the plan and its participants and to offset recordkeeping and administration costs). To the extent that plan administrators receive these fees as compensation for the sale of fund shares, broker-dealer registration may be required unless an exemption is available. *See supra* note 168. As discussed previously, broker-dealer registration would be required if a plan administrator received the proceeds of an "ongoing sales charge" under the proposal.

[388] *See* Thomas P. Lemke & Gerald T. Lins, Mutual Funds Sales Practices § 5:1 (Aug. 2009) (noting that third-party services in retirement plans may be paid by employer subsidies, direct charges to employees, or fees included in mutual fund expenses, such as rule 12b–1 fees and service fees).

[389] *See* Paul G. Haaga, Jr. & Michele Y. Yang, Practicing Law Institute, *Distribution of Mutual Fund Shares: Rule 12b–1,* Corporate Law and Practice Course Handbook Series (June 1998) (indicating that rule 12b–1 fees may cover things that are not purely "sales" or "distribution" and pointing out that many fund groups subsidize the cost of 401(k) recordkeeping).

[390] *See* ICI, *The Economics of Providing 401(k) Plans: Services, Fees and Expenses, 2008* (Aug. 2009) (*http://www.ici.org/pdf/fm-v18n6.pdf*).

[391] *See id.* at 9.

[392] *See* Comment Letter of Charles P. Nelson (June 19, 2007) ("B and C shares usually aren't used by group retirement plan platforms due to the back-end loads that are assessed, which cause recordkeeping problems at the participant level."). Some retirement plans do, however, invest in share classes that require the tracking of share lots. *See* The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, *supra* note 390 at Appendix (the ICI estimates that approximately one percent of 401(k) assets invested in mutual funds are invested in class B shares). We also understand that in light of rule 22c–2, some plan administrators now track the holding periods of fund shares to ensure that redemption fees are properly assessed.

[393] This issue is also raised in the context of insurance company separate accounts, as discussed in Section III.H of this Release, *supra.* We discuss the potential costs of implementing a conversion feature in Section V of this Release, *infra.*

[394] The staff's estimate is based in part on information obtained from Lipper's LANA Database.

[395] We believe that our proposal will complement disclosure initiatives proposed by the Department of Labor ("DOL"), which were designed to ensure that retirement plan participants and beneficiaries could make informed investment decisions about their retirement savings. Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans, 73 FR 43014 (July 23, 2008). The proposed DOL regulation would require, among other things, enhanced disclosure of the fees and expenses of certain retirement plans and their investment options. *Id.*

[396] *See, e.g.,* Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, *et seq.*); U.S. Dept. of Labor, Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure (Dec. 7, 2007) [72 FR 70988, 70995 (Dec. 13, 2007)]. *See also* U.S. Dept. of Labor, Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure (July 6, 2010) [75 FR 41600 (July 16, 2010)] (interim final rule).

[397] We understand that representatives from the fund industry have asserted that because the plan rather than plan participants is the legal owner of the fund shares, the use of plan assets will exclusively benefit the fund shareholder. This reliance on legal ownership is, however,

N. Transition

If we adopt the rule and amendments we are proposing today, we expect to provide for a transition period in order to minimize disruption and costs to funds, fund shareholders, and those who participate in the distribution of fund shares.

1. Effective Date

We would expect to provide for an effective date within 60 days of issuing a release adopting the proposed amendments, which would permit (but not require) funds to take advantage of the new rules quickly.

• We request comment on the effective date.

2. Compliance Period

We would anticipate providing a compliance period of at least 18 months after the effective date in the adopting release for funds to come into compliance with rule 12b–2, amended rule 6c–10, and the other amendments, for new shares sold. Although we want to provide fund shareholders with the benefits we believe will be afforded by the rule amendments as soon as possible, we are sensitive to the operational consequences of the changes we are proposing, and the potential complexities of altering existing fund distribution arrangements. We believe a period of 18 months should be sufficient for funds and fund managers to make the necessary changes to their operating systems, distribution and other agreements, and registration statements.

• We request comment on the length of the compliance period, particularly in light of the "grandfathering" provisions we describe below.

3. Grandfathering

a. Grandfathered Classes and Shares

Five-year grandfathering period. Under our proposal, funds would be required to comply with the changes discussed above with respect to all shares issued after the compliance date of the new rules. We would provide a five-year grandfathering period after the compliance date for share classes issued prior to the compliance date, and that deduct fees pursuant to rule 12b–1 as it exists today, after which those shares would be required to be converted or exchanged into a class that does not deduct an ongoing sales charge.[398] New sales would not be permitted in grandfathered share classes after the compliance date of the new rules.[399]

We are proposing this five-year grandfathering period so that investors, including those in classes currently subject to rule 12b–1 plans, would benefit from the protections provided by the proposed new rules. The grandfathering period is also designed to avoid unnecessarily disrupting existing distribution arrangements under which fund underwriters may have advanced commissions to pay dealers who have sold fund shares, and who may depend upon cash flow from existing rule 12b–1 fees. The five-year grandfathering period would provide time for funds and dealers to revisit and revise existing arrangements to reflect the approach to asset-based distribution fees we are proposing today. This period could allow the existing 12b–1 classes to wind down in an orderly manner. The five-year period is designed to allow sufficient time for funds and their boards to institute any necessary conversion or exchange procedures, and prepare to transition all remaining assets out of grandfathered 12b–1 classes.

We request comment on the proposed grandfathering period for the transition of existing shares into shares that comply with any new rules we adopt.

• Does this approach make sense in light of the compelling need for the regulatory changes we have discussed in this Release? Should we not provide a grandfathering period and instead require compliance immediately? Should we provide a shorter or longer period than five years (*e.g.,* one, three, eight, or ten years)? Instead of a five-year grandfathering period, should we permit the grandfathering of 12b–1 share classes to continue indefinitely?

• Should the proposed grandfathering period apply only to certain types of classes, such as "level load" share classes, and not apply to other classes, permitting them to convert on their own schedules? What benefits might result from such an approach? Should the proposed grandfathering period apply only to classes that charge a certain level of 12b–1 fees (*e.g.,* 12b–1 fees greater than 50 or 75 basis points)?

Alternative transition approaches. We also request comment on alternative approaches to carrying out the transition of existing share classes into classes that comply with any new rules we adopt.

• Should we adopt a "sunset" provision requiring that, by a certain date in the future, all share classes that do not conform to the new rules must be converted or exchanged into share classes that do conform to the new rule? Should we require, in connection with this approach, that shares in an existing fund class that are charged 12b–1 fees at a certain rate per annum be converted or exchanged into shares of a class that are charged a total of marketing and service fees and ongoing sales charges at the same or lower rate per annum? For example, under this approach, shares in an existing class that are currently charged a 12b–1 fee of 100 basis points would have to be converted or exchanged into a class that charges a marketing and service fee of no more than 25 basis points, and an ongoing sales charge of no more than 75 basis points for a limited time period. Should such an approach also take into account the existence of contingent deferred sales loads in existing classes or classes into which shareholders may be converted or exchanged?

• In addition, if we were to adopt this approach, when should we require that all fund shares be converted or exchanged into shares that comply with the new rules? By the compliance date of the rules (*i.e.,* 18 months), or within a shorter period (*e.g.,* six months or one year) or longer period (*e.g.,* two, three, five or seven years) of time? Should we exclude from the sunset provision any shares (such as certain B shares) that by their terms already convert automatically into shares with no ongoing sales charge?

• We request comment whether certain share classes would encounter special difficulty in complying with the proposed five-year transition period. For example, R share classes (which often charge a 50 basis point asset-based distribution fee for an indefinite period) may not be designed to convert to another class, and are often structured to pay certain costs that might otherwise be paid by the plan provider or the plan participants. If these classes are required to transition into a class that does not charge an ongoing sales charge after five years, this may result in a situation in which fees used to pay for these services may no longer be available. However, as discussed previously, this situation could also arise after the conversion period of an ongoing sales charge R

inconsistent with the justifications given for the use of fund assets to pay for sub-accounting, transfer agency and other plan expenses. If the plan is the owner for purpose of this analysis, then only the cost of effecting plan transactions and maintaining records (and not transactions of plan beneficiaries) would be legitimate fund expenses.

[398] Proposed rule 12b–2(d).

[399] Dividends or other distributions on the old shares, however, could be reinvested in the same share class as the shares on which the dividend or distribution was declared. These investments are not considered "sales" of securities for purpose of the Securities Act and this grandfathering provision. *See* Interpretation of the Division of Corporation Finance Relating to Dividend Reinvestment and Similar Plans, Securities Act Release No. 5515 (July 22, 1974), 4 SEC Docket 623 (Aug. 6, 1974).

share class under our proposal.[400] Does the proposed grandfathering period pose any special issues for certain share classes? If so what type of issues, and how should we deal with them? Should we exempt any funds or share classes from the requirement to eventually end existing 12b–1 share classes? Should we provide different grandfathering periods for different funds or classes? If so, how should we identify and define those funds or classes?

• Should we take another approach to dealing with the problem of old 12b–1 share classes other than grandfathering or a sunset provision, and if so what should that approach require? Should we instead require funds to make special exchange offers to shareholders of old classes?

Funds could comply with the new rules by adding a conversion feature to newly issued shares. These funds would disclose in their prospectuses that shares issued before a specified date (the compliance date or earlier) will not convert on the same schedule as new shares would convert.

• Would this approach confuse shareholders? If so, should we require that shares offered under the new rules be issued in a separate class from grandfathered shares?

b. Operation of Grandfathered Classes

During the grandfathering period, under proposed rule 12b–2(d), funds could continue to charge 12b–1 fees on grandfathered share classes at the same (or lower) rate as was approved in the fund's 12b–1 plan.[401] A fund that wants to increase the rate of distribution fees, as a result, would have to comply with the proposed new rules. Because the level of fees charged on old share classes could not be increased, we do not believe any investor protection purpose would be served by requiring these funds to continue to have a formal 12b–1 plan, if we adopt these proposed rules. Thus, directors could eliminate mandatory provisions of 12b–1 plans that require board annual approval, quarterly reports, and allow for board or shareholder termination of plans.[402] Directors would continue to exercise responsibility over the 12b–1 plans in accordance with their general oversight responsibilities. In addition, pursuant to their broad authority, directors could terminate the plan at any time.

After the expiration of the proposed grandfathering period, grandfathered shares would be required to be converted or exchanged into a class of shares that does not charge an ongoing sales charge. We are concerned that permitting the deduction of an ongoing sales charge on grandfathered fund shares could continue to result in shareholders overpaying for distribution. In addition, it may lead to operational and administrative difficulties in identifying the asset-based distribution fees that the shareholders may have already paid and providing proper credit for these fees. Not permitting the deduction of ongoing sales charges on grandfathered shares that have been exchanged or converted is likely to reduce investor confusion and provides equal treatment to investors.

Because under both rule 12b–1 and our proposal a shareholder vote is required to materially increase the rate of a 12b–1 fee, we would also require that the marketing and service fee of the class that the grandfathered shares are exchanged or converted into not be higher than the 12b–1 fee charged on the shares in the last fiscal year. This is designed to ensure that shareholders are not transitioned into a class that charges higher asset-based distribution fees than they agreed to when they originally bought the fund.

We request comment on any aspect of the proposed grandfathering provision.

• Should we require that directors continue to have specific, annual approval duties pursuant to existing rule 12b–1 until those fees are no longer collected? Should the rule provide further flexibility in addition to what we propose? We request comment on how grandfathered 12b–1 fees should be presented in the prospectus fee table. Should classes with grandfathered 12b–1 fees be required to separate and label their distribution fees just as they would under our proposed amendment to the fee table (*i.e.,* by assigning the first 25 basis points charged as a marketing and service fee and the remainder as an ongoing sales charge)? Is there another label for grandfathered 12b–1 fees that would be descriptive without a reference to "12b–1"?

• Instead of providing requirements regarding which class grandfathered shares would need to be transitioned into after the expiration of the grandfathering period, should we instead leave the decision to the discretion of the board? If so, should we provide any guidance to the board, and what should that guidance provide? For example, should we require that the board take into account the length of time that the grandfathered shares have already paid 12b–1 fees, the rate of the ongoing sales charge that might be charged, the technical capabilities of the fund and its service providers, or other factors?

4. Shareholder Voting

For funds that decide to convert current 12b–1 share classes to conform with the proposed rules, proposed rule 12b–2 would prohibit a fund from instituting a marketing and service fee unless the fee has been approved by a vote of at least a majority of outstanding voting securities.[403] A shareholder vote would not be required if the fund: (i) Currently deducts from fund assets annual 12b–1 fees of 25 basis points or less, and does not increase the rate of the fee; or (ii) reduces the amount of the 12b–1 fees it currently deducts to an annual rate of 25 basis points or less, and renames the 12b–1 fee a "marketing and service fee." We understand that approximately two-thirds of fund classes either do not deduct a 12b–1 fee, or deduct a 12b–1 fee of 25 basis points or less annually. The proposed rule also would not require funds that currently impose a 12b–1 fee to obtain shareholder approval if the combined ongoing sales charge and marketing and service fee would not exceed amounts that could be deducted under a 12b–1 plan in effect at the time the proposed amendments, if adopted, become effective. In those instances, funds only would be required to separate the 12b–1 fee into a marketing and service fee and an ongoing sales charge, and treat each fee in conformity with the new rule and rule amendments.

We believe that, in the circumstances described above, a shareholder vote would serve no useful purpose because shareholders have already implicitly approved the fee, and a shareholder vote would thus impose unnecessary costs on funds and their shareholders.

• We request comment on whether a shareholder vote would serve any purpose in either of these situations.

IV. Paperwork Reduction Act

Certain provisions of our proposal would result in new or altered "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[404] The Commission is therefore submitting proposed rule 12b–2 and proposed amendments to rule 6c–10 and Form N–SAR under the Act; proposed amendments to Forms N–1A and N–3 under the Act and the Securities Act; and proposed amendments to Schedule 14A and rule 10b–10 under the Exchange Act to the Office of Management and Budget ("OMB") for

[400] *See supra* Section III.M.5.

[401] Proposed rule 12b–2(d)(2).

[402] Proposed rule 12b–2(d)(1).

[403] *See* proposed rule 12b–2(b)(3).

[404] 44 U.S.C. 3501–3520.

review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to the collection of information requirements of our proposals would not be kept confidential.

The proposed amendments to rule 6c–10 would result in a new collection of information requirement within the meaning of the PRA. The title for the collection of information requirement is "Rule 6c–10 under the Investment Company Act of 1940, 'Exemptions for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads and Other Sales Charges.' " If adopted, this collection would not be mandatory, but would be required in order for a fund to deduct asset-based distribution fees in excess of the proposed limits in rule 12b–2.

Proposed rule 12b–2 would result in a new collection of information requirement within the meaning of the PRA. The title for the collection of information requirement is "Rule 12b–2 under the Investment Company Act of 1940, 'Investment Company Distribution Fees.' " If adopted, this collection would not be mandatory, but would be required in order for funds to deduct certain asset-based distribution fees. In addition, our proposal would rescind rule 12b–1 and its associated collection of information requirement. We are submitting to OMB the proposed rescission of rule 12b–1's collection of information requirement.

The Commission is also proposing amendments to existing collection of information requirements titled "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, 'Registration Statement of Open-End Management Companies.' " Compliance with the disclosure requirements of Form N–1A is mandatory. The Commission is also proposing amendments to existing collection of information requirements titled "Form N–3 under the Investment Company Act of 1940 and Securities Act of 1933, 'Registration Statement of Separate Accounts Registered as Management Investment Companies.' " Compliance with the disclosure requirements of Form N–3 is mandatory. The Commission is also proposing amendments to existing collection of information requirements titled "Form N–SAR under the Investment Company Act of 1940, 'Semi-Annual Report for Registered Investment Companies.' " Compliance with the disclosure requirements of Form N–SAR is mandatory. The Commission is further proposing amendments to existing collection of information requirements titled "Regulation 14A under the Securities Exchange Act of 1934 and the Investment Company Act of 1940, 'Commission Rules 14a–1 through 14a–16 and Schedule 14A." Compliance with the disclosure requirements of Regulation 14A is mandatory. The Commission is also proposing amendments to existing collection of information requirements titled "Rule 10b–10." Compliance with the disclosure requirements of rule 10b–10 is mandatory.

Finally, the Commission is also proposing a number of technical and conforming amendments that would not amend the existing collection of information burdens for rules 11a–3, 17a–8, 17d–3, and 18f–3 under the Investment Company Act, and Forms N–4 and N–6, and Regulation S–X under the Securities Act and the Investment Company Act. These technical and conforming amendments would not constitute new or altered collections of information because they would not alter the legal requirements of these rules and forms.[405] We estimate that the approved burdens for these rules and forms would not change if our proposal is adopted.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. OMB has not yet assigned control numbers to the new collections for proposed rule 12b–2 and amended rule 6c–10. The approved collection of information associated with Form N–1A, which would be revised by the proposed amendments, displays control number 3235–0307. The approved collection of information associated with Form N–SAR, which would be revised by the proposed amendments, displays control number 3235–0330. The approved collection of information associated with Form N–3, which would be revised by the proposed amendments, displays control number 3235–0316. The approved collection of information associated with Schedule 14A, which would be revised by the proposed amendments, displays control number 3235–0059. The approved collection of information associated with rule 10b–10, which would be revised by the proposed amendments, displays control number 3235–0444.

A. Rule 6c–10

Proposed rule 6c–10(c) would give funds and their underwriters the option of offering classes of shares that could be sold by dealers subject to competition in establishing sales charge rates. A fund could rely on this provision if it discloses its election on Form N–1A. This disclosure would be a collection of information within the meaning of the PRA. The collection of information for rule 6c–10(c), however, is incorporated into the total collection of information burden for our amendments to Form N–1A, discussed below. As a result, the collection of information burden for proposed rule 6c–10(c) is not a separate collection of information within the meaning of the PRA.

B. Rescission of Rule 12b–1

We are proposing to rescind rule 12b–1. If adopted, the rescission would eliminate the current collection of information requirement for rule 12b–1 in its entirety. Therefore, there would no longer be a collection of information burden for rule 12b–1.

C. Rule 12b–2

Proposed rule 12b–2(b) would permit funds to deduct a "marketing and service fee" from fund assets that is limited to the maximum rate permitted by NASD Conduct Rule 2830 for "service fees." In order to institute or increase the rate of a marketing and service fee after the initial public sale of class shares, proposed rule 12b–2(b)(3) would require a fund to obtain approval from a majority of the class's shareholders. As under proposed rule 6c–10(b)(3), funds would obtain shareholder approval by soliciting proxies from shareholders, which would be a collection of information under the PRA on Schedule 14A under the Exchange Act. As noted above, Schedule 14A has an approved collection of information which our proposed amendments would change. As a result, the collection of information burden for proposed rule 12b–2(b)(3) is not a separate collection of information, but is incorporated into the estimated paperwork burden for Schedule 14A.

Proposed rule 12b–2(c) would maintain the restrictions in current rule 12b–1(h) that prohibit funds from using brokerage commissions to finance distribution. Among other things, proposed rule 12b–2(c) would maintain

[405] As discussed in the cost-benefit analysis in Section V of this Release, *infra,* we have estimated that complying with these amended rules and forms would take the same amount of time and cost the same amount of money as complying with the existing rules and forms, with the exception of rule 11a–3. The additional costs that the staff has estimated that funds may incur as a result of our proposed amendments to rule 11a–3 are not related to collections of information in the rule (certain disclosure, recordkeeping, and notice requirements), but are instead a result of system changes that funds may undertake. As a result, we do not expect that these proposed technical and conforming rule and form amendments would change existing approved collection of information burdens for any of these rules and forms.

the requirement that a fund (and its board of directors) approve policies and procedures designed to prevent: (i) The persons responsible for selecting brokers and dealers to effect the fund's portfolio securities transactions from taking into account the brokers' and dealers' promotion or sale of shares issued by the fund or any other registered investment company; and (ii) the fund, or any investment adviser or principal underwriter of the fund, from entering into any agreement or other understanding under which the fund directs portfolio securities transactions to a broker or dealer to pay for the distribution of fund shares. The requirement to adopt these policies and procedures would be a collection of information under the PRA, and would be mandatory in order to direct brokerage transactions to a broker or dealer that distributes fund shares. The Commission has determined that these collections of information would continue to be necessary to protect against the inappropriate use of fund assets to finance distribution, and would continue to be used by the Commission and its examination staff to monitor these activities.

As discussed in the most recent PRA update to rule 12b–1, we understand that funds (if they intend to pay brokerage commissions to brokers and dealers who distribute their shares) generally adopt these policies and procedures when the fund is created, and incur any burden associated with this collection of information at that time. We assume that all funds that are currently operating have already adopted these policies and procedures (if relevant), and therefore only new funds that begin to operate in the future will incur this burden. As previously estimated in the most recent update to the rule 12b–1 PRA, the staff estimates that approximately 300 new funds would begin operations annually that would comply with proposed rule 12b–2(c) and adopt these policies and procedures. Based on information received during conversations with fund representatives, the staff estimates that adopting these policies and procedures would take a total of approximately 1 hour of the board of directors' time as a whole, at an internal time cost equivalent rate of $4500 per hour.[406] The staff further estimates that preparing these policies and procedures for adoption would take approximately 3 hours of internal fund counsel time, at an internal time cost equivalent rate of $316 per hour.[407] Finally, the staff estimates that it would cost funds approximately $800 in outside counsel time (2 hours multiplied by an estimated $400 per hour for outside counsel time)[408] to adopt these policies and procedures.

Therefore, the collection of information related to adopting directed brokerage policies and procedures pursuant to proposed rule 12b–2(c) would require a total annual burden of 300 hours of director time (at a total internal time cost equivalent of $1,350,000),[409] 900 hours of inside counsel time (at a total internal time cost equivalent of $284,400),[410] and $240,000 in outside counsel expenses.[411] The total annual number of respondents would be 300, the total number of responses would also be 300, and the annual burden per respondent would be 4 hours and $800 in costs.

- We request comment on these estimates and assumptions. If commenters believe these estimates and assumptions are not accurate, we request they provide specific data that would allow us to make a more accurate estimate.

D. Form N–1A

Form N–1A is the form that funds use to register with the Commission under the Investment Company Act and to offer their shares under the Securities Act.[412] As discussed previously, the proposed amendments would require funds that file Form N–1A to: (i) Eliminate the line item currently titled "Distribution and/or Service (12b–1) Fee" and include two new line items (as relevant) titled "Marketing and Service Fee" and "Ongoing Sales Charge;" (ii) revise prospectus narrative disclosure on asset-based distribution fees; and (iii) revise the SAI disclosure regarding asset-based distribution fees. The Commission believes that these changes in the collection of information should better enable fund investors to understand the purpose and use of the asset-based distribution fees that they may pay. These changes will be used to better monitor and oversee the use of asset-based distribution fees by funds, and assist investors in obtaining information about the use of fund assets. Preparing Form N–1A is a collection of information under the PRA and is mandatory.

1. New Defined Term

The proposed amendments would add the defined term "Asset-Based Distribution Fee" to the general instructions of Form N–1A.[413] This term would be used in other parts of our proposed amendments to the form. The additional definition would not affect the form's collection of information requirements and therefore would not change current paperwork burden estimates.

2. Revised Fee Table

The proposed amendments would require funds, in the fee table of Form N–1A, to replace the current line item titled "Distribution and/or Service (12b–1) Fees" with two line items titled "Marketing and Service Fee" and "Ongoing Sales Charge," as relevant. Only funds that charge asset-based distribution fees would be affected by these proposed amendments. Funds would be able to refer to the same information about asset-based distribution fees that they use to complete the 12b–1 line item currently in the fee table. All information necessary to disclose these fees in the fee table would be readily available, and the staff estimates that funds would not require any additional resources to disclose the fees on two lines, instead of one. Therefore, the staff estimates that

[406] The staff has estimated the average cost of board of director time as $4500 per hour for the board as a whole, based on information received from funds, intermediaries, and their counsel.

[407] The staff estimates that the internal time cost equivalent for time spent by internal counsel is $316 per hour. This estimate, as well as all other internal time cost estimates made in this analysis (unless otherwise noted) is derived from SIFMA's *Management & Professional Earnings in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead or from SIFMA's *Office Salaries in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[408] The staff has estimated the average cost of outside counsel as $400 per hour based on information received from funds, intermediaries, and their counsel.

[409] This estimate is based on the following calculations: (1 hour of directors time × 300 newly formed funds = 300 hours); (300 hours × $4500 per hour = $1,350,000).

[410] This estimate is based on the following calculation: (3 hours of inside counsel time × 300 newly formed funds = 900 hours); (900 hours × $316 per hour = $284,400).

[411] This estimate is based on the following calculation: ($800 cost of outside counsel time × 300 newly formed funds = $240,000).

[412] There are two types of Form N–1A filings: (i) Initial filings; and (ii) annual post-effective amendments. Funds usually incur significantly more time and incur greater costs when first registering a fund under their initial N–1A filings than when filing their annual post-effective updates. Therefore, we separately estimate the burden for each type of filing.

[413] The proposal would define an "Asset-Based Distribution Fee" as "a fee deducted from Fund assets to finance distribution activities pursuant to rule 12b–2(b) ("Marketing and Service Fee"), rule 12b–2(d), or rule 6c–10(b) ("Ongoing Sales Charge")." Proposed General Instructions to Form N–1A.

funds would not incur any additional hourly burdens or costs to complete the fee table as we propose to amend it. As a result, the staff estimates that the proposed amendments to the fee table would not change the collection of information currently approved by OMB to complete the fee table in Form N–1A, either initially or when submitting a post-effective amendment.

• We request comment on these assumptions. If commenters believe these assumptions are not accurate, we request they provide specific data that would allow us to make a more accurate estimate.

3. Prospectus Revisions

The proposal would amend Item 12(b) of Form N–1A, which currently requires funds that have adopted 12b–1 plans to disclose information about the operation of the plan in the prospectus. The proposal would eliminate this requirement, and instead require funds to disclose whether they charge a marketing and service fee or an ongoing sales charge, and if they do, to disclose the rate of the fees and the purposes for which they are used. A fund that imposes an ongoing sales charge would be required to disclose the number of months (or years) before the shares would automatically convert to another class without an ongoing sales charge. In addition, we would require a fund offering multiple classes of shares in a single prospectus (each with its own method of paying distribution expenses) to describe generally the circumstances under which an investment in one class may be more advantageous than an investment in another class.

Based on information received during conversations with fund representatives, the staff estimates that funds filing initial Form N–1A registrations would expend approximately the same amount of time and costs to provide the narrative prospectus disclosure on asset-based distribution fees under our proposal as they expend under the current disclosure requirements.

The proposed amendments would also require funds that deduct asset-based distribution fees to revise their narrative prospectus disclosure in post-effective amendments. The staff further estimates that the funds would need to incur a one-time cost and time expenditure to revise and update existing narrative prospectus disclosure to comply with the proposal. After this one-time revision and update is complete, the staff estimates that ongoing costs and time expenditures would remain the same as current estimates because we expect the revised disclosures to be of similar length and complexity as the previous disclosure. The staff expects that the revised narrative prospectus disclosure would be similar in length to the current narrative, and thus would not change the number of pages in the prospectus or change printing costs of the prospectus.[414] The staff estimates that funds would use outside legal resources to prepare this one-time amendment to reflect the proposed new framework. The staff expects that all funds in a fund family would engage in this one-time update at the same time, and therefore the costs for revising a series prospectus would be shared among all funds in the family, thereby reducing the cost for each post-effective update filer. Based on an analysis of data received on Form N–SAR and information received from fund representatives, the staff estimates that there are approximately 379 fund families that may be affected by this proposed change. The staff further estimates that, on average, each of these fund families would incur approximately $2000 in one-time costs (for outside legal counsel drafting and review) and expend 10 hours in internal personnel time (at an internal time cost equivalent rate of $316 per hour) to revise item 12(b) of Form N–1A to comply with the proposed changes. The staff therefore estimates that funds will incur a one-time burden of 3710 hours (at an internal cost equivalent of $1,197,640) and $758,000 in outside costs associated with this proposed revision to Item 12(b) of Form N–1A.[415] The staff estimates that the proposed amendments would not change the ongoing currently approved collection of information for Item 12(b) of Form N–1A.

• We request comment on these estimates and assumptions. If commenters believe these estimates and assumptions are not accurate, we request they provide specific data that would allow us to make a more accurate estimate.

4. Statement of Additional Information

The proposal would amend a number of items contained in the SAI portion of Form N–1A. Item 19(g) currently requires funds to describe in detail the material aspects of their 12b–1 plans, and related agreements, in the SAI. Under the proposal, 12b–1 plans would no longer be required, and grandfathered funds would no longer be required to have written "plans" that are supervised and approved by the board of directors; therefore, the proposal would eliminate paragraphs 2 through 6 of Item 19(g).[416] However, Item 19(g)(1) (which requires disclosure of the material aspects of a 12b–1 plan, including a list of the principal activities paid for under the plan and the dollar amounts spent on each activity over the last year), may help investors to better understand how the fund uses asset-based distribution fees, and the proposal would retain it in substance. The proposal would amend Item 19(g)(1) to eliminate references to a 12b–1 plan, and instead require disclosure of the principal activities paid for through asset-based distribution fees (both ongoing sales charges and marketing and service fees).

The proposal would add new paragraph (d) to Item 25, which would require funds that have elected to externalize the sales charge pursuant to proposed rule 6c–10(c) to disclose this election on Form N–1A. This disclosure is designed to inform interested investors of the fund's election. The proposal would also make technical conforming changes to Instruction 3(b) to Item 3; Instruction 5 to Item 26(b)(4); and Item 27(d)(1) (and Instruction 2(a)(i) to Item 27(d)(1)) to replace references to 12b–1 fees and plans with references to the appropriate types of asset-based distribution fee under the proposal. Finally, the proposal would eliminate existing Item 28(m) of Form N–1A, which requires a fund to attach its rule 12b–1 plan and any related agreements as an exhibit to its registration statement. The exhibit would be unnecessary because proposed rule 12b–2 does not require a written plan.

The staff estimates that the proposed amendments to the SAI would result in overall time and cost savings for funds. Funds would incur savings because of the reduced time required and lower costs to prepare disclosure materials for Item 19(g).[417] The staff further estimates that responding to proposed paragraph (d) of Item 27 would entail little additional time and no costs, as it would only require a fund to make a single affirmative statement (if

[414] Based on conversations with fund representatives, the staff understands that, in general, unless the page count of a prospectus is changed by at least 4 pages, the printing costs would remain the same.

[415] These estimates are based on the following calculations: (379 × 10 hours = 3790 hours); (3790 hours × $316 per hour = $1,197,640); (379 × $2000 = $758,000).

[416] *See supra* note 313 and accompanying text.

[417] Generally, most SAIs are not printed in advance, but are instead printed on demand when requested. The staff estimates that the proposal would not result in a change in printing costs because the staff does not expect that the number of pages of the SAI would be reduced as a result of the proposal, and if there were any reduction; any savings would be minimal due to the few occasions on which the SAI is printed.

applicable) that the fund has taken the election. The staff estimates that the other proposed technical and conforming amendments to the SAI would not result in changes in the hourly burdens or cost because they would not change the legal or disclosure obligations of funds.

Therefore, based on conversations with fund representatives, the staff estimates that the proposed amendments to the SAI would result in a net time savings of approximately 10 hours for each fund's initial filing and of 1 hour for each post-effective amendment (all of which time would be spent by fund counsel at a time cost equivalent rate of $316 per hour). Based on a review of information filed with the Commission on Form N–SAR, the staff estimates that there are approximately 300 funds with a 12b–1 plan that newly file each year and 7367 funds that have adopted a 12b–1 plan that file post-effective amendments. The staff further estimates that the amendments would reduce costs incurred for outside counsel associated with completing the SAI, by $500 for each initial filing and $150 for each post-effective amendment. Therefore, the staff estimates that all funds submitting their initial SAI filing would experience a reduction of 3000 hours (at an internal cost equivalent of $948,000) and a cost savings of $150,000.[418] The staff also estimates that all funds filing post-effective amendments will experience a reduction of 7367 hours (at an internal cost equivalent of $2,327,972) and cost savings of $1,105,050.[419]

5. Change in Burden

In the most recent Paperwork Reduction Act submission for Form N–1A, the staff estimated that for each fund portfolio or series, the initial filing burden is approximately 830.47 hours at a cost of $20,300, and the post-effective amendment burden is approximately 111 hours at a cost of $8894. This hourly burden includes time spent by in-house counsel, back office personnel, compliance professionals, and others in preparing the form. The costs include that of outside counsel to prepare and review these filings.

As discussed above, in total the staff estimates that our proposed amendments to Form N–1A would result in net time savings of approximately 10 hours for each fund's initial filing (for a new total estimate of 820.47 hours) and of 1 hour for each post-effective amendment (for a new total estimate of 110 hours).[420] The staff further estimates that the proposed amendments would reduce costs spent on outside counsel associated with completing Form N–1A, by $500 for each initial filing (for a new total estimate of $19,800) and $150 for each post-effective amendment (for a new total estimate of $8744). The staff also estimates that the proposed amendments would require each fund family with any funds that would file a post-effective amendment to incur approximately $2000 in one-time costs and expend 10 hours in internal personnel time.

The staff assumes that only funds that charge asset-based distribution fees would be affected by our proposed amendments to Form N–1A and would realize these reduced burdens and cost savings. The staff estimates that, each year, there are approximately 7367 funds with 12b–1 plans that file post-effective amendments, and would therefore be affected by our proposed amendments. The staff estimates that an additional 300 funds with asset-based distribution fees would file an initial Form N–1A each year after our proposed amendments would go into effect. Based on these estimates, the staff estimates that funds would save a total of 3000 hours and $150,000 when submitting initial Form N–1A filings each year.[421] In addition, the staff anticipates that funds would save approximately 7367 hours, and $1,105,050 annually when preparing post-effective updates to Form N–1A.[422]

Finally, as discussed above, the staff further estimates that all fund families that file post-effective amendments and have adopted 12b–1 plans would incur a one-time burden of 3790 hours (at an internal cost equivalent of $1,197,640) and $758,000 in outside costs when preparing post-effective amendments to comply with the proposed amendments for the first time.[423]

- We request comment on any of these estimates or assumptions.

E. Form N–SAR

Form N–SAR is the form that registered investment companies use to make periodic reports to the Commission. Completing Form N–SAR is a collection of information under the PRA and is mandatory. Our proposed amendments would add an instruction to Form N–SAR to disregard, for funds that no longer have 12b–1 plans, four questions (Items 41–44) that relate to the operation of rule 12b–1 plans (because they would be irrelevant in light of our proposed new framework for asset-based distribution fees). However, funds that maintain grandfathered fund classes would continue to respond to these items.

The total annual hour paperwork burden estimate for Form N–SAR is 107,213 hours. The current approved total number of respondents is 4142, and the total annual number of responses is 7461.[424] The staff estimates that there are approximately 1292 management investment companies that respond to Items 40–44 of Form N–SAR.

The staff estimates that our proposed amendments would reduce the time it takes funds that do not have grandfathered share classes to complete Form N–SAR by 0.25 hours, and that there would be no change for funds that maintain grandfathered share classes. The staff estimates that, if these amendments are adopted, in the first three years after adoption, approximately 20% of these 1292 management investment companies (or 258) will no longer maintain grandfathered share classes and experience the estimated savings, while the remaining 80% (or 1034) will continue to have grandfathered share classes and respond to these items. Because Form N–SAR is completed twice a year, the staff estimates that each filer that no longer responds to these items would save approximately 0.5 hour annually (at an internal time cost equivalent rate of $316 per hour). The staff therefore estimates that our proposed amendments to Form N–SAR would result in an aggregate incremental time savings of approximately 129 hours (with a total internal time equivalent cost savings of

[418] These estimates are based on the following calculations: (300 × 10 hours = 3000 hours); (3000 hours × $316 per hour = $948,000); (300 × $500 = $150,000).

[419] These estimates are based on the following calculations: (7367 × 1 hour = 7367 hours); (7367 hours × $316 per hour = $2,327,972); (7367 × $150 = $1,105,050).

[420] This is based on the estimates made previously in this section that there would be no burden change as a result of our proposed amendments to the prospectus portion of N–1A and that the proposed changes to the SAI portion would result in the savings indicated.

[421] This is based on the following calculations: (300 new filers × 10 hours savings = 3000 hours in total savings); (300 new filers × $500 savings = $150,000 total savings).

[422] This estimate is based on the following calculations: (7367 amendments × 1 hour savings = 7367 hours in total savings); (7367 amendments × $150 savings = $1,105,050 total savings).

[423] These estimates are based on the following calculations: (379 × 10 hours = 3790 hours); (3790 hours × $316 per hour = $1,197,640); (379 × $2000 = $758,000).

[424] The staff estimates the number of filers and filings based on the actual number of EDGAR filings and on other Commission records.

$40,764)[425] annually compared to the current approved hour burden.

- We request comment on these estimates and assumptions.

F. Schedule 14A

Funds must comply with the requirements of Schedule 14A when they solicit proxies from their shareholders. Our proposal would amend the required disclosures under Schedule 14A when a fund seeks approvals from its shareholders to institute or increase the rate of a marketing and service fee after shares have been offered to the public. The proposed amendments would remove items regarding asset-based distribution fees that would be superfluous in light of our proposed rescission of rule 12b–1 and new rule and rule amendments on asset-based distribution fees, and would amend certain other items.

Based on conversations with fund representatives and the most recent PRA update to Schedule 14A, the staff estimates that 75% of the burden of preparing Schedule 14A filings is undertaken by the fund internally and that 25% of the burden is undertaken by outside counsel retained by the fund at an average cost of $400 per hour.[426] The staff estimates that 3 funds would solicit proxies each year for the purposes of seeking approval to implement or increase a fee as required under proposed rules 6c–10(b)(3) and 12b–2(b)(3) (the same number that the staff has estimated would solicit proxies under rule 12b–1) because the staff believes the proposed amendments are unlikely to affect the number of funds that seek proxy approval from their shareholders. For each of these 3 funds, the staff estimates that our proposed amendments to Schedule 14A would create an incremental reduction in burden of 3 hours of fund personnel time (at an internal time cost equivalent rate of $316 per hour) and reduced costs of $400 for the services of outside counsel, as a result of the proposed amended disclosures relating to marketing and service fees on Schedule 14A. The staff therefore estimates that these amendments would reduce the total annual paperwork burden of Schedule 14A by approximately 9 hours of fund personnel time (3 funds × 3 hours) at an internal time cost equivalent of $2844,[427] and by approximately $1200 (3 funds × $400) for the services of outside counsel.

In our most recent PRA submission for Regulation 14A (which includes Schedule 14A), the staff estimated that there are a total of 7300 respondents who use Schedule 14A, each of whom responds once a year, for a total of 7300 responses annually. The staff estimates that this number of respondents would remain the same under the proposed amendments because the staff does not expect our proposed amendments to affect the number of funds that seek approval from their shareholders to institute or increase marketing and service fees. The current approved aggregate time burden for these respondents is 669,026 hours and the cost burden is $78,822,387. The staff estimates that the proposed amendments would reduce this time burden by a total of 9 hours (3 hours times the 3 respondents affected by our proposed amendments) for a new total of 669,017 hours, and would reduce the cost burden by a total of $1200, for a new aggregate total of $78,821,187. This would represent an average per respondent time burden of 92 hours, and a cost burden of $10,797.[428]

- We request comment on these estimates and assumptions. If commenters believe these estimates and assumptions are not accurate, we request they provide specific data that would allow us to make a more accurate estimate.

G. Form N–3

Form N–3 is the registration form used by insurance company separate accounts registered as management investment companies that offer variable annuity contracts.[429] The proposed amendments would require separate accounts that file Form N–3 to: (i) Revise prospectus narrative disclosure on asset-based distribution fees; and (ii) revise the SAI disclosure regarding asset-based distribution fees. Preparing Form N–3 is a collection of information under the PRA and is mandatory.

The proposal would amend Instruction 2 to Item 7(a) of Form N–3, which currently requires registrants to list the principal types of activities for which 12b–1 payments are made and the total amount spent in the most recent fiscal year, as a percentage of net assets (or, if the plan has not been in effect for a full fiscal year, a description of the payments). The proposal would eliminate the requirement that registrants disclose the total amount spent in the most recent fiscal year, and instead require registrants to provide a description of asset-based distribution fees, as defined in the new proposed rule. The proposal would retain the requirement that registrants list the principal types of activities for which asset-based distribution fees are deducted.

As discussed above, funds would no longer be required to have written plans that are supervised and approved by the board of directors under our proposed rule amendments. Therefore, the proposal would eliminate paragraphs (ii) and (iii) of Item 21(f), which relate to the specific operation of a 12b–1 plan.[430] Paragraph (i) of Item 21(f) requires registrants to disclose the manner in which amounts paid by the registrant under a 12b–1 plan were spent. We believe that the information required to be disclosed in paragraph (i) of Item 21(f) would continue to be useful to investors and the Commission. Therefore, we are proposing to amend Item 21(f) to require disclosure of the principal activities paid for through asset-based distribution expenses incurred under rule 12b–2(b) and (d) and rule 6c–10(b), deleting references to 12b–1 plans. For the reasons discussed above, we are also proposing to amend Instruction 5 to Item 26(b)(ii) to delete any references to 12b–1 plans. However, registrants would be required to provide the same information with respect to expenses and reimbursements accrued pursuant to rule 12b–2(b), rule 12b–2(d), and rule 6c–10(b).

The current approved aggregate time burden to comply with the collection of information requirements in Form N–3 is 13,024 hours. The current approved aggregate cost burden is $601,400.

Only registrants that charge asset-based distribution fees would be affected by our proposed amendments to Form N–3. Based upon a review of filings with the Commission, the staff estimates that 1 registrant that currently files on Form N–3 charges asset-based distribution fees, and would file a post effective amendment. Based upon

[425] This estimate is based on the following calculation: (258 × 0.5 hour = 129 hours); (129 hours × $316 per hour = $40,764).

[426] This cost estimate is based on consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing proxies with the Commission.

[427] This estimate is based on the following calculation: (9 hours × $316 per hour = $2844).

[428] This is based on the following calculations: (669,017 hours ÷ 7300 respondents = 92 hours); ($78,821,187 ÷ 7300 respondents = $10,797).

[429] There are two types of Form N–3 filings: (i) Initial filings; and (ii) annual post-effective amendments. Funds usually incur significantly more time and incur greater costs when first registering a fund under their initial N–3 filings than when filing their annual post-effective updates. Therefore, the staff separately estimates the burden for each type of filing.

[430] Item 21(f)(ii) requires a registrant to disclose whether any interested person or director has a financial interest in the operation of the 12b–1 plan. Item 21(f)(iii) requires disclosure of the anticipated benefits of the plan to the fund.

conversations with fund representatives, the staff estimates that it would cost this registrant approximately $2,000 in one-time costs (for outside legal counsel drafting and review) and require an expenditure of 10 hours in internal personnel time (at an internal time cost equivalent rate of $316 per hour) to revise its prospectus to comply with the proposed amendments. The staff further estimates, based on those conversations, that the proposed amendments to Item 21 and Instruction 5 of Item 26 would result in time savings when completing a post-effective amendment of a Form N–3 filing. The staff estimates that this registrant would save approximately 1 hour (at an internal time cost equivalent of $316 per hour) annually as a result of the proposed amendments.

The staff further estimates that no new registrants that file on Form N–3 are likely to charge asset-based distribution fees under proposed rule 12b–2 and the proposed amendments to rule 6c–10. Accordingly, the staff estimates that there will be no other changes in burden hours or costs for Form N–3 as a result of the proposed rule and rule amendments.

- We request comment on these estimates and assumptions.

H. Rule 10b–10

Rule 10b–10 requires broker-dealers to convey basic trade information to customers regarding their securities transactions. The proposed amendments would revise rule 10b–10 by requiring disclosure of additional information related to sales charges in connection with transactions involving mutual funds, requiring disclosure of certain additional information in connection with callable debt securities, and removing certain outdated transitional provisions from the rule. This collection of information would be mandatory. The information would be used by broker-dealer customers to evaluate the terms of their own securities transactions. In addition, the information contained in the confirmations may be used by the Commission, self-regulatory organizations, and other securities regulatory authorities in the course of examinations, investigations, and enforcement proceedings. No governmental agency regularly would receive any of this information.[431]

The proposed amendments to rule 10b–10, in part, would require transaction confirmations to disclose additional information about sales charges associated with purchases and redemptions of mutual fund shares. The purpose of these changes is to help make the confirmation a more complete record of the transaction, help mutual fund investors more fully understand the sales charges they pay, and assist investors in verifying whether they paid the correct sales charge as set forth in the prospectus. The proposed amendments to rule 10b–10 also would require confirmation disclosure of certain additional information about callable debt securities. The purpose of these proposed amendments is to provide investors with information necessary to evaluate their transactions involving callable debt securities, by helping to alert investors to misunderstandings, avoid confusion, promote the timely resolution of problems, and better enable investors to evaluate potential future transactions.[432]

The rule would apply to the approximately 5,035 broker-dealers registered with the Commission. The Commission staff understands, however, that under the current industry practice confirmations are customarily generated and sent by clearing broker-dealers ("clearing firms") subject to agreements ("clearing agreements") with introducing broker-dealers ("introducing firms"). Under this industry practice, the Commission staff understands that clearing firms would bear most of the costs associated with updating back-office operations to accommodate the proposed changes to rule 10b–10.[433]

Based on filings with the Commission, the staff estimates that of the 5,035 broker-dealers registered with the Commission, approximately 530 are clearing firms. The Commission staff understands that approximately 30% of clearing firms, or 160 firms, have developed their own proprietary systems for generating and inputting the information necessary to generate and deliver a confirmation. The staff further understands that the other approximately 70% of clearing firms, or 370 firms,[434] license platforms from third-party service providers (or vendors) that, among other things, generate the data necessary to produce and send confirmations.[435]

Based on the industry's current practices, the staff understands that the 160 clearing firms with proprietary systems would have a one-time burden associated with reprogramming software and otherwise updating back-office systems and platforms to enable confirmation delivery systems to generate the information required under the proposed amendments.[436] The Commission staff further estimates, based on discussions with industry representatives, that this one-time programming burden for clearing firms with proprietary back-office systems would amount to, on average, approximately 4,500 hours per clearing firm, for a total of 720,000 burden hours.[437]

With respect to clearing firms that license vendor platforms ("clearing firm licensees"), the staff estimates that these vendors will incur costs similar to those incurred by clearing firms with proprietary systems to reprogram and update their platform. Thus, staff estimates that the burden to vendors would be approximately 4,500 burden hours per vendor, resulting in one-time costs to these vendors of approximately $3.4 million dollars.[438] Based on discussions with industry representatives, the staff also understands that clearing firm licensees would still incur approximately 800 burden hours per firm to adopt the changes to a vendor's platform and determine that the output satisfies the requirements of the proposed amendments to the rule. The staff estimates that the total burden for clearing firm licensees would be approximately 296,000 total hours.[439] When we sum the labor hours borne by clearing firms with proprietary systems with those borne by clearing firm

[431] Exchange Act Rule 17a–4(b)(1), 17 CFR 240.17a–4(b)(1), requires broker-dealers to preserve confirmations for three years, the first two years in an accessible place.

[432] The proposal also would delete certain expired transitional provisions of rule 10b–10 related to securities futures products; there would be no burden associated with this deletion.

[433] For purposes of this analysis, the staff assumes that all registered broker-dealers effect transactions in mutual fund shares. To the extent that some broker-dealers may not effect transactions in mutual fund shares, the paperwork burdens and costs may be overstated. Furthermore, for the purposes of this analysis, broker-dealers that have not entered into clearing agreements with introducing firms yet generate and send confirmations, are included as clearing firms in the staff's estimates.

[434] The staff's understanding is that these firms are usually small and medium-sized clearing firms, but may also include some larger firms as well.

[435] The staff's understanding is that there are three primary vendors that license platforms used by clearing firms to generate and send confirmations. In addition to licensing platforms, many clearing firms may also use vendors to separately print and mail confirmations to investors.

[436] The staff notes that these estimates are based on the assumption that ongoing sales charges and marketing and service fees commonly will not change over time for any particular mutual fund. The staff also assumes that the information necessary to comply with the proposed changes to rule 10b–10 will be readily available to clearing firms from various third-party service providers.

[437] 160 clearing firms with proprietary systems × 4,500 burden hours = 720,000 burden hours.

[438] 3 vendors × 4,500 burden hours × $251 dollars per hour = $3,388,500. The staff estimates per hour costs to be $251.

[439] 370 clearing firm licensees × 800 burden hours = 296,000 total burden hours.

licensees, we estimate that the total one-time hour burden as a whole for entities registered with the Commission will be 1,016,000 burden hours.[440]

The Commission staff understands that once completed, this reprogramming and systems updating should permit clearing firms to have automated access to the additional information that would be disclosed in confirmations. Accordingly, the staff does not believe that there will be a material increase in the ongoing costs associated with producing and sending confirmations once the initial one-time reprogramming costs are completed.

I. Request for Comments

We request comment on whether the estimates provided in this PRA are accurate. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–15–10. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–15–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213.

V. Cost-Benefit Analysis

A. Background

The Commission is sensitive to the costs and benefits imposed by its rules. We recognize that if adopted, the proposed new rule and rule amendments would result in costs for some funds and other marketplace participants.[441] We have identified certain costs and benefits of the proposed rule and rule amendments and request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on our estimates of the costs and benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this analysis, and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for funds and their intermediaries, including small entities, and for investors, as well as any other costs or benefits that may result from the adoption of the proposed rule and rule and form amendments.

The proposal is designed to protect individual investors from paying disproportionate amounts of sales charges in certain share classes, promote investor understanding of fees, eliminate outdated requirements, provide a more appropriate role for fund directors, and introduce greater competition among funds in setting sales loads and distribution fees generally. As discussed in greater detail above, we are proposing to: (i) Rescind rule 12b–1 under the Act; (ii) adopt new rule 12b–2 under the Act, which would permit funds to deduct a marketing and service fee at a rate no greater than the maximum rate permitted as a service fee under the NASD sales charge rule (currently 25 basis points) annually; (iii) adopt amendments to rule 6c–10, which would permit funds to deduct asset-based sales charges in excess of the marketing and service fee in the form of an "ongoing sales charge" (up to certain limits); (iv) as an alternative to the ongoing sales charge, provide an elective alternative that would allow funds to sell their shares through intermediaries subject to competition in establishing sales charge rates; (v) amend Form N–1A and N–3 under the Securities Act and the Investment Company Act, and Schedule 14A under the Exchange Act to reflect the proposed rule and rule amendments, (vi) make conforming amendments to rule 11a–3 under the Investment Company Act; and (vii) make technical amendments to rules 17a–8, 17d–3, and 18f–3, and Forms N–SAR, N–4 and N–6 under the Investment Company Act, and rule 6–07 of Regulation S–X under the Securities Act.

In general, for each aspect of the proposal, we have attempted to estimate the potential costs and benefits in dollars for each entity that may be affected. Some of the expected costs and benefits from our proposals cannot be measured in dollars, but are effects nonetheless, such as the benefits of improved investor understanding of distribution charges and the costs and benefits of greater equity in the cumulative amount of sales charges paid by individual investors. When actual dollar costs and benefits would likely result (such as from the elimination of certain disclosure requirements that would be eliminated under the proposal, such as descriptions of 12b–1 plans) we have estimated the relevant costs and savings.[442]

In this analysis, Commission staff has estimated the percentage of funds or other parties that are likely to change their operations in response to our proposal. These and other estimates and assumptions are based on interviews with representatives of funds, their intermediaries, investor advocates, and the experience of Commission staff. In addition, in preparing this cost-benefit analysis, Commission staff reviewed fund prospectuses, periodic reports made to the Commission pursuant to Form N–SAR and other fund filings, and a commercial database of information on funds.[443] Throughout this analysis, unless otherwise stated, the estimates are based on these interviews, reviews, and examinations.

B. Impact of the Proposal

We have designed our proposal to minimize the cost impact on funds,

[440] (160 clearing firms with proprietary systems × 4,500 burden hours) + (370 clearing firm licensees × 800 burden hours) = 1,016,000 total burden hours.

[441] Although we discuss many of these costs in terms of the fund, the preparation of these reports is most likely done by employees of the fund's adviser, because most funds do not have any employees of their own.

[442] We have discussed many of the benefits of this proposal previously in this Release, and therefore, we will focus more on the proposal's costs in this section, and will refer back to previous discussions of our proposal's anticipated benefits when appropriate.

[443] The Commission staff's review is based in part on information obtained from Lipper's LANA Database.

intermediaries, and service providers while maximizing the investor protection and other benefits. As further discussed below, the staff anticipates that funds representing approximately 93% of all assets under management will incur minor or no expenses in complying with our proposal. This section contains some basic estimates about the size of the fund marketplace and its use of 12b–1 fees, and a general outline of what we believe our proposal's impact will be on certain market segments. Much of the information described in this section is included in two tables at the end of this section. The information is based on an analysis of data received on Form N–SAR and other filings and a review of a Lipper database.

The staff estimates that as of the end of 2009, there were approximately 9427 funds (consisting of 8611 traditional mutual funds and 816 ETFs) sponsored by 682 investment advisers.[444] Approximately 7367 of these funds have adopted a 12b–1 plan for one or more of their share classes.[445] Assets managed by all funds, as of the end of 2009, totaled approximately $12.2 trillion.[446]

The number of sponsors is roughly equivalent to the number of "fund families," which are groups of funds that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies. Therefore, on average, each fund family has approximately 14 funds.[447] Of the 682 fund families, the staff estimates that approximately 379 (or 56%) have at least one fund in the family that currently has a 12b–1 plan. These fund families may be affected in some way by our proposal. The staff estimates that 172 of these 379 fund families (or 45%) only have funds that charge no more than 25 basis points in 12b–1 fees, and the remaining 207 (or 55%) have at least one fund that charges 12b–1 fees in excess of 25 basis points. The 207 fund families that have at least one fund that charges 12b–1 fees in excess of 25 basis points average 37 funds per fund family, a significantly higher average number of funds per family than the typical fund family.[448] As discussed previously, and in more detail below, we anticipate that funds that charge 25 basis points or less in 12b–1 fees would incur minimal costs under our proposal, while those that charge more than 25 basis points may be more significantly affected by our proposal.

The staff estimates that, as of the end of 2009, there were approximately 26,788 fund share classes. On average, the staff estimates that each mutual fund has approximately 3 share classes.[449] However, some funds only have one share class (including many no-load funds), while others may have ten or more classes to support a variety of distribution arrangements.[450] Generally, funds that charge 12b–1 fees tend to have more share classes, because they offer multiple methods of paying for distribution (*e.g.,* at the time of purchase, at the time of redemption, or over time through the 12b–1 fee charged on fund assets) for investors with different needs and goals.[451] Thus, for purposes of estimating costs per fund in this analysis, the staff will assume that a typical fund that charges 12b–1 fees would have 4 classes: An A, B, and C share class, as well as an institutional or retirement share class.[452]

Of the 26,788 existing fund share classes, 12,646 (or 47% of all classes) do not charge a 12b–1 fee. These classes hold approximately $7.3 trillion in assets.[453] The remaining 14,142 classes (or 53% of all classes) that do charge a 12b–1 fee hold approximately $4.9 trillion in assets. The staff believes that 47% of fund classes (those that do not charge 12b–1 fees) are unlikely to incur any costs as a result of our rule proposal.[454] Thus, the staff believes that funds managing approximately $7.3 trillion in assets, representing 60% of all assets under management, would not have to change their operations or disclosures as a result of our proposal.[455]

A total of 6,482 share classes (or 46% of classes that charge 12b–1 fees) charge a 12b–1 fee of 25 basis points or less. As discussed further below, although our proposal would affect these classes, we anticipate that the funds with these classes are likely to incur minimal costs associated with complying with our proposal. As a result, the staff anticipates that of all 26,788 fund share classes, 19,128 (which hold $11.3 trillion in assets, representing approximately 93% of all assets under management) would incur only minor, if any, costs if our rule proposals are adopted.[456]

Approximately 7,660 (or 54%) of the share classes that have 12b–1 fees charge 12b–1 fees of greater than 25 basis points. All of these classes would be affected in some way by our rule proposals. These share classes hold approximately $855 billion in assets, or 17% of the assets managed by classes that charge 12b–1 fees, and 7% of all assets under management.

- We request comment on these estimates.

[444] Like mutual funds, most ETFs are registered open-end management investment companies (a small number of ETFs are UITs). However, ETFs are counted separately from mutual funds in ICI statistics. The number of funds above reflects each separate series of a fund (many funds consist of more than one series or portfolio). Costs incurred in complying with the proposal may often be incurred at the fund "complex" or "family" level, and not at the series or class level, and, when appropriate, the staff has based its estimates on the number of sponsors or families affected rather than the number of series or classes.

[445] A fund may have a 12b–1 plan, but not charge 12b–1 fees on one or more particular share classes of the fund.

[446] This figure is based on staff examination of industry data, and includes traditional mutual funds, funds of funds, ETFs, and funds underlying insurance company separate accounts.

[447] This is based on the following calculation: (9427 funds ÷ 682 advisers = 14 funds per adviser). This number can and does vary widely, with some advisers managing only a single fund, and others managing hundreds of funds.

[448] The 207 advisers that advise at least one fund with a 12b–1 fee in excess of 25 bps advise a total of 7660 funds, for an average of 37 funds per family.

[449] This is based on the following calculation: (26,788 classes ÷ 8611 funds = 3 classes per fund). The staff excludes ETFs from this calculation because most ETFs offer only one class of shares, and therefore have reduced both the total fund and class number by the number of ETFs in this calculation. An ETF that is offered as a share class in a fund would be included in this estimate of average share classes per fund.

[450] *See, e.g.,* Prospectus for The Growth Fund of America (Nov 1, 2009) (*http://www.americanfunds.com/pdf/mfgepr-905_gfap.pdf*).

[451] Not all funds that charge 12b–1 fees offer multiple retail classes. For example, the Legg Mason Funds only offer a single retail class of shares for their funds, a C share equivalent that charges 12b–1 fees without a front-end load. *See, e.g.,* Prospectus for Legg Mason American Leading Companies Value Trust (Aug 1, 2009), (*http://prospectus-express.newriver.com/get_template.asp?clientid=legg&fundid=52465Q101&level=4&doctype=pros*).

[452] *See supra* note 84. We do not expect that institutional classes would be affected by our proposal because funds do not typically charges 12b–1 fees on these classes.

[453] This figure is based on a staff examination of industry data and includes mutual funds, funds of funds, ETFs, and funds underlying insurance company separate accounts.

[454] If our proposal is adopted, we do not expect that fund classes that do not currently charge 12b–1 fees would begin charging asset-based distribution fees, because the fund would have already established a distribution structure and in light of the necessity of obtaining shareholder approval to institute such a fee.

[455] This figure is based on the following calculation: ($7.3 trillion (assets not subject to a 12b–1 fee) ÷ $12.2 trillion (total assets under management) = 60% of assets under management not subject to a 12b–1 fee).

[456] As discussed further below, we recognize that the cost impact of our proposal would not be distributed evenly across all funds, but rather that certain funds and fund families are likely to bear a greater share of the expenses that may result due to the nature of their distribution and operational models.

Table 1: 12b-1 Fees – Class Data

	Fund Classes	% of Total Classes
Classes without 12b-1 Fees	12,646	47%
Classes with 12b-1 Fees	14,142	53%
• **12b-1 Fees < or = 25 BPs**	6482	24%
• **12b-1 Fees > 25BPs**	7660	29%
Totals	26,788	100%

Table 2: 12b-1 Fees – Asset Data

	Assets (in billions)	% of All Fund Assets
Classes without 12b-1 Fees	$7289	60%
Classes with 12b-1 Fees	$4861	40%
• **12b-1 Fees < or = 25 BPs**	$4006	33%
• **12b-1 Fees > 25BPs**	$855	7%
Totals	$12,150	100%

C. Marketing and Service Fee

Proposed rule 12b–2 would allow funds to deduct from fund assets a marketing and service fee of up to the maximum rate of the service fee permitted under NASD Conduct Rule 2830 (currently 0.25% or 25 basis points of net fund assets annually).[457] The proposed 25 basis point marketing and service fee could be used for any legitimate distribution related activity including, but not limited to, the continuing shareholder account services encompassed by the NASD service fee.

1. Benefits

We anticipate that proposed rule 12b–2 would benefit investors by permitting funds to continue to pay for: (i) Follow-up services provided to investors by brokers and other intermediaries after the sale has been made; and (ii) a fund's participation in distribution channels that offer investors a convenient way of buying shares, such as fund supermarkets[458] and retirement plans.[459]

We anticipate that our proposal would also benefit funds and their directors, and ultimately fund shareholders, by eliminating the procedural requirements of rule 12b–1. Under proposed rule 12b–2, boards of directors of funds that deduct a marketing and service fee would not be required to adopt a 12b–1 plan or annually approve it. As a result, funds and their advisers would no longer incur many of the costs of creating a 12b–1 plan, preparing quarterly and fiscal year reports of plan expenditures, or preparing materials that support the specific findings that fund boards are required to make annually in order to approve a 12b–1 plan, as discussed in more detail in Section I of this analysis.

As discussed above, fund boards would have discretion to use fund assets to finance distribution activities within the limits of the rule and their fiduciary obligations to the fund and fund shareholders. Therefore, we anticipate that funds would still incur some costs stemming from director review of arrangements paid for through the marketing and service fee. Our understanding is that, in general, funds pay their directors on an annual or per meeting basis, and we do not expect that the directors will reduce the frequency of their meetings as a result of the proposed marketing and service fee. Based on this assumption, we estimate that funds that currently charge a 12b–1 fee of 25 basis points or less will likely not realize significant cost savings as a benefit deriving from our proposal. However, the directors of funds that impose a marketing and service fee

[457] Proposed rule 12b–2(b); NASD Conduct Rule 2830(d)(5).

[458] *See supra* Section III.C.

[459] Because these payments represent an integral part of many funds' distribution strategies, we believe that significantly restricting the ability of funds to continue to pay for these ongoing services through fund assets would likely disrupt existing distribution systems, impose significant costs on funds and intermediaries, and may have other unintended consequences that could adversely affect funds and fund shareholders.

under proposed rule 12b–2 might spend less time on reviews and plan approvals, and instead be able to focus more of their time on other pressing concerns related to the fund's operations.[460]

2. Costs

We anticipate that funds that currently charge a 12b–1 fee of 25 basis points or less would not change the amount that they currently charge under proposed rule 12b–2. The proposed maximum amount of the marketing and service fee would be the same as the current NASD limit on service fees, and would also be the same as the current NASD limit on the amount of asset-based distribution fees that may be charged by funds describing themselves as "no-load." Thus, we expect that funds that currently use 12b–1 fees for these purposes would continue to charge the same level of fees. Because under the proposal, funds that currently charge 12b–1 fees of 25 basis points or less could charge marketing and service fees of the same or smaller amount without holding a shareholder vote, we expect that funds that currently charge 12b–1 fees of 25 basis points or less would incur only the costs of updating their disclosure documents as a result of our proposed rulemaking.[461]

As discussed above, we do not anticipate that funds that currently charge 25 basis points or less in 12b–1 fees would have to implement any significant systems changes or incur other additional operational costs in order to impose a marketing and service fee under proposed rule 12b–2 because there should be no significant impact on operational expenses due to a transition from a 12b–1 fee of that level to a marketing and service fee. Nevertheless, directors and legal counsel to these funds and their advisers may require some time and training to review and understand the permissible uses and limits of marketing and service fees, compared to current practices. Commission staff estimates that for each fund family with one or more funds that charge a 12b–1 fee of 25 basis points or less, inside fund counsel would spend[462] approximately 20 hours[463] to review and understand the proposal and the board of directors would spend approximately 3 hours[464] to review and understand their responsibilities under the proposal. Because inside counsel and directors are typically not paid on an hourly basis, and the staff does not expect that funds would hire additional personnel or increase the frequency of meetings as a result of this proposal, the staff does not anticipate that this process would have any specific dollar costs for funds or advisers. However, we recognize that this represents time that directors and counsel would otherwise have spent on other fund business.

Based on these estimates, other than the costs of revising their disclosure documents which we analyze later in the section on the disclosure amendments, the staff expects that the 6482 fund classes that currently charge 12b–1 fees of 25 basis points or less would incur no new costs in complying with proposed rule 12b–2. The assets under management of these classes represent approximately 82% of the total assets under management that are currently subject to 12b–1 fees.

We request comment on these estimates and assumptions regarding the costs of compliance with our proposal for funds that currently charge 12b–1 fees of 25 basis points or less.

- Is the staff correct in estimating that, other than costs to amend disclosure documents, these funds would incur no new dollar costs in complying with this part of our proposal? Is the estimate regarding time spent by inside counsel and directors reasonable? Would funds hire additional personnel, or otherwise incur additional or different costs or benefits than what we have estimated here?

D. Ongoing Sales Charge: Funds

The proposed amendments to rule 6c–10 would permit funds to deduct asset-based distribution fees in excess of the marketing and service fee in the form of an ongoing sales charge.[465] Proposed rule 6c–10(b) would limit ongoing sales charges to an amount that does not exceed the amount of the highest front-end load that the investor would have paid if he or she had invested in another class of shares in the same fund. Funds could also comply with the proposed rule amendments by deducting the ongoing sales charge only until the cumulative rates imposed on each share purchase matches the maximum front-end load, or in some circumstances, the maximum sales charge limit set forth in NASD Conduct Rule 2830(d)(2)(A) (currently 6.25% of the amount invested). In effect, the proposal would treat asset-based distribution fees in excess of the marketing and service fee as a type of deferred sales load.

1. Benefits

We believe that the ongoing sales charge proposal would create a number of benefits, many of which are discussed above.[466] The proposed amendment would limit the cumulative ongoing sales charges that may be imposed on a purchase of fund shares to a set "reference load" (generally the highest front-end load charged on the fund's class A shares). As a result, investors would have the benefit of knowing, at the time of their purchase, either the maximum amount that they would pay for distribution, or the maximum length of time ongoing sales charges would be deducted. As a result, long-term shareholders would be protected from paying disproportionate amounts of sales charges in certain share classes, as is currently possible under rule 12b–1.[467] Finally, the ongoing sales charge would also be clearly identified and described in the fund prospectus and fee table, which should increase

[460] We discuss the cost savings that might result from the proposed rescission of rule 12b–1 and its attendant director duties in Section V.I of this Release, *infra.*

[461] We estimate the costs of such disclosure changes in Section V.G of this Release, *infra.*

[462] Throughout this analysis we will estimate the cost of the time spent by internal personnel in complying with the proposal, because the time spent represents time that would otherwise be available for other activities of the fund (or relevant entity). Although these costs may be an economic cost of the proposal, it would not result in new monetary costs for funds, and would not result in the hiring of more staff by advisers or funds.

[463] The staff estimates that the internal time cost equivalent for time spent by internal counsel is $316 per hour, for a total cost per fund family of $6320 (20 hours × 316 per hour = $6230). This estimate of $316 per hour, as well as all other internal time cost estimates made in this analysis (unless otherwise noted) is derived from SIFMA's *Management & Professional Earnings in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead or from SIFMA's *Office Salaries in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[464] The staff estimates that the internal time cost equivalent for time spent by the boards of directors as a whole is $4500 per hour, for a total cost per fund family of $13,500 (3 hours × $4500 per hour = $13,500). The staff has estimated the average cost of board of director time as $4500 per hour for the board as a whole, based on information received from funds, intermediaries, and their counsel.

[465] For a complete discussion of the proposed ongoing sales charge, *see* Section III.D, *supra.* All funds that charge an ongoing sales charge would also incur the costs of implementing a marketing and service fee pursuant to proposed rule 12b–2 as well, as discussed in Section C above.

[466] *See supra* Section III.M.

[467] *See, e.g.,* Comment Letter of Bridgeway Funds, Inc. and Bridgeway Capital Management, Inc. (July 19, 2007).

transparency and improve investor understanding of fees.

We believe that the ongoing sales charge proposal would also result in benefits for funds and fund directors. Under our proposal, funds would not have to adopt a "plan" in order to impose an ongoing sales charge, and fund directors would not be required to undertake time-consuming formal reviews and approvals of 12b–1 plans. Instead, funds and their boards would consider ongoing sales charges as integral parts of a fund's sales load structure and would review them under the same procedures under which boards currently review and approve the fund's underwriting contract. Boards could benefit from this to the extent it permits them to focus more on the fund's distribution system as a whole.

As a result of our proposal, funds may eventually incur lower compliance costs in tracking the sales charge limits established by NASD Conduct Rule 2830. As discussed previously, NASD Conduct Rule 2830(d)(2) imposes a complex, fund-level cap on the aggregate amount of sales charges, including asset-based sales charges, that may be imposed by funds sold by broker-dealer members. The investor-level cap on ongoing sales charges created by our proposal would provide an alternative means of ensuring that the NASD sales charge rule's maximum sales charge limits are not circumvented through the use of asset-based sales charges. If our proposal is adopted, FINRA may consider amending (or interpreting), this provision to eliminate the need for funds to track aggregate sales charges at the fund level.[468]

If FINRA were to amend (or interpret) this provision of Rule 2830, it could reduce compliance costs for these funds.[469] The staff estimates that funds currently spend $2000 in costs and 5 hours of internal staff time tracking these caps annually for each class that charges a 12b–1 fee in excess of 25 basis points. The costs are for computer and software resources, outside accountants, and other compliance costs. The 5 hours of internal time spent by these funds include 4 hours of time spent by accountants (at a cost of $153 per hour) and 1 hour spent by an assistant compliance director (at a cost of $326 per hour), for a total internal time cost equivalent of $938 per fund class.[470] As discussed above, approximately 7660 classes charge a 12b–1 fee in excess of 25 basis points, and we estimate that approximately 50% of these (or 3830 classes) may no longer need to incur these expenses. Therefore, the staff estimates a potential total annual cost savings of $7,660,000 and a time savings of 19,150 hours (representing an internal time cost equivalent of $3,592,540)[471] for this portion of the proposal for all funds.

- We request comment on these estimates and assumptions.

We considered several alternative methods of achieving the goals of this rulemaking, including potentially requiring individual shareholder level accounting of asset-based distribution fees, and prohibiting the deduction of asset-based distribution fees entirely. Although these alternatives might result in some of the benefits of the ongoing sales charge proposal, we expect they would come at a significant cost. Our proposal for an ongoing sales charge instead is designed to provide many of these benefits to investors, without significantly disrupting current distribution models or requiring most funds and intermediaries to develop costly new operating systems.

2. Costs

If adopted, the limitations on ongoing sales charges contained in proposed rule 6c–10(b) would require funds that currently charge 12b–1 fees in excess of 25 basis points to amend their share classes and/or alter their operations in one of several ways. First, some funds may choose to amend their share classes so that they conform to the new requirements (*e.g.,* by reducing their fees to a level that would not implicate the ongoing sales charge limitations). Second, other funds might restructure their expenses and separate non-distribution related expenses from their asset-based distribution fees in order to keep total fees from exceeding 25 basis points. Third, some funds might keep their present share classes, but issue new shares that comply with the proposed rule amendments after a certain date (*i.e.,* "old" and "new" shares would be mixed in the same class). Fourth, other funds might create new share classes on or before the compliance date that meet the proposal's requirements. The chosen method of complying with the new requirements would likely be driven by the fund's business model and the cost-effectiveness of each option given the fund's particular circumstances. In general, the staff assumes that either funds or their advisers or other service providers would bear the costs of implementing these changes.[472] The costs of each of these potential compliance options are discussed below.

a. Fee Reductions

Funds with classes that currently charge 12b–1 fees of more than 25 basis points might determine that it would be cost effective to reduce their asset-based distribution fees to the 25 basis point cap of the marketing and service fee. Funds could accomplish this by either reducing their distribution expenses or shifting a portion of the costs to their adviser or another party. These funds could continue offering their existing share classes without having to provide for a conversion period under proposed rule 6c–10(b).

We anticipate that, out of the funds that charge a 12b–1 fee of more than 25 basis points, only those funds that charge up to 30 basis points would likely reduce their asset-based distribution fee to 25 basis points or less. We expect that funds that charge more than 30 basis points would be unlikely to find the reduction to 25 basis points or less to be the most cost effective means of complying with our proposal, and therefore would be unlikely to pursue this alternative. Commission staff estimates that there are approximately 471 fund classes that charge 12b–1 fees of more than 25 up to and including 30 basis points (representing $143 billion in assets), and that 40% of these classes (188) may reduce their fees to 25 basis points or less in response to our proposal. The average class that charges 12b–1 fees in this range has approximately $304 million in assets. If a class with $304 million in assets that charged 30 basis

[468] *See* note 74 *supra (*discussing how rule 2830 provides a "minimum standard," and does not prevent a fund from developing a better method of tracking the loads paid by shareholders and ensuring that they do not overpay).

[469] Funds that continue to have shares in classes with grandfathered 12b–1 fees pursuant to proposed rule 12b–2(d) would continue to incur these costs, however, during the grandfathering period.

[470] This estimate is based on the following calculations: ($153 × 4 hours = $612; $612 + $326 = $938).

[471] This is based on the following calculation: ($938 × 3830 classes = $3,592,540 time savings value; 5 hours × 3830 classes = 19,150; $2,000 × 3830 classes = $7,660,000 cost savings).

[472] Fund families are organized in many ways, with some having affiliated transfer agents, underwriters and other service providers, and others contracting these services out to unaffiliated third parties. The staff understands that some contracts obligate the fund to reimburse the transfer agent for system costs related to regulatory changes, while other contracts require the transfer agent to bear these expenses. Because of the variability in these contract terms, throughout this analysis, when the staff estimates costs, the staff generally assumes that the estimated costs would be borne directly by the affiliated service providers and the fund family, or indirectly through increased expenses charged by unaffiliated service providers. Except in the case of retirement plan record keepers, who may face unique issues in responding to this proposal, the staff does not break these costs out separately.

points reduced its 12b–1 fees to 25 basis points, investors in that class would see their 12b–1 fees reduced by approximately $152,000 annually. If all of the classes that chose to reduce their fees charged the full 30 basis points, the maximum fee reduction would be approximately $28,576,000 a year.[473]

These reductions in fees could be viewed as a cost to these funds or their advisers. Nonetheless, investors in the funds would experience a corresponding and offsetting dollar-for-dollar benefit due to lower expenses. In any event, a fund likely would only elect this alternative if it determined that the reduction would be cost effective. We request comment as to the likelihood that funds would respond to our proposal with fee reductions.

- Are we correct in assuming that only funds that charge between 25 and 30 basis points are likely to reduce their fees? How many funds would choose this option? What kind of costs would they or their affiliates bear to reduce their current 12b–1 fee, if any?

b. Fee Restructuring

Many funds currently pay for expenses that are not distribution related with 12b–1 fees (such as administrative, sub-transfer agency, or other fees). As a result, we expect that some funds with classes that impose 12b–1 fees of more than 25 basis points, up to and including 50 basis points (*e.g.,* some A and R share classes), might instead be able to treat the amount greater than 25 basis points as a fund operating expense. These funds would have to carefully examine their 12b–1 fees and identify which, if any, expenses could be properly classified as non-distribution expenses. If non-distribution expenses paid through 12b–1 plans are significant enough, these funds might be able to reduce their asset-based distribution fees to the 25 basis point cap and avoid being subject to the ongoing sales charge limits and conversion periods in proposed rule 6c-10(b).

The staff estimates that there are approximately 2168 fund classes that charge 12b–1 fees of more than 25 up to and including 50 basis points. The staff previously estimated that approximately 188 of these classes may respond by reducing their fees, leaving a total of 1980 classes that fall into this category. Of those classes, the staff estimates that approximately 50% (or 990 classes) may be able, and find it cost effective, to re-characterize a portion of their current 12b–1 fee.

We expect that funds that choose this course of action would incur the costs of: (i) Conducting an internal review of the fees and expenses charged by the affected share classes; (ii) amending fund prospectuses and disclosure documents to reflect the fee re-structuring (as discussed in greater detail below); and (iii) modifying operational and accounting systems to reflect the restructured fees. The staff estimates that it would take approximately 20 hours of inside counsel time (at an internal time cost equivalent of $316 per hour), and 1 hour of time for each board as a whole (at an internal time cost equivalent of $4500 per hour), for a total internal time cost equivalent of $10,820 to complete these tasks for each class.[474] The staff estimates that funds may incur an additional $5,000 in outside counsel expenses associated with the internal review and disclosure changes.[475]

Therefore, we estimate that it would cost the 990 fund classes that might perform this internal review and re-assessment of expenses approximately $4,950,000 in outside expenses and $10,711,800 in internal time cost equivalent to comply with our proposal.[476] We assume that the other 990 fund classes that charge between 25 and 50 basis points in 12b–1 fees, but do not re-assess these fees or otherwise reduce their fees to 25 basis points or less, would impose an ongoing sales charge in compliance with proposed rule 6c–10(b). Their costs are discussed below.

We request comment on these estimates and assumptions.

- Is the staff's estimate of $5,000 per fund class for outside counsel expenses, 20 hours of inside counsel time, and 1 hour of board time reasonable for the internal review and disclosure amendment process? If not, what would be a better estimate? Are there other costs that might be associated with such a review?

c. Ongoing Sales Charge: Conversion and Modified Share Classes

Under our proposed amendments to rule 6c–10, funds with asset-based distribution fees in excess of 25 basis points (*i.e.* with ongoing sales charges) that issue new shares after the compliance date, must have, or create, a share class that does not impose an ongoing sales charge (such as a typical class A) into which shares with the ongoing sales charge would convert after a set period of time (a "target class").[477] We anticipate that there would be two primary sets of costs that these fund families may incur related to our proposed amendments to rule 6c–10: (i) Updating or creating a conversion system, and (ii) amending or creating new share classes. Both sets of costs would include expenses related to building or enhancing systems and back office technology and operations.

(i) Conversion System

As a preliminary matter, the staff estimates that approximately 90% (or 186) of the 207 fund families[478] that may be affected by our proposed amendments to rule 6c–10 have at least one fund with a class of B shares and, as a result, have a conversion system in place that they could use to convert shares with ongoing sales charges. The staff estimates that it may cost a fund family $100,000 in one time initial costs, and $50,000 annually, to modify an existing B share conversion system to manage the conversions of funds with ongoing sales charges. These costs would include: (i) Computer hardware needed to store an increased volume of transaction activity; (ii) computer software to expand and update the systems' ability to track share lots and convert the shares based on the new aging schedules; and (iii) expanding back office and accounting operations and hiring and training additional back office personnel.

The other 10% or 21 fund families that do not have conversion systems may incur additional costs to create a conversion system, or contract for one through an external service provider. The staff estimates that it would cost a fund family (or its affiliated transfer agent) approximately $250,000 in initial costs and $100,000 in annual costs to purchase or create a conversion system, integrate existing computers, software, and networks, train personnel, and

[473] This estimate is based on the following calculation: ($152,000 × 188 classes = $28,576,000).

[474] This is based on the following calculations: ($316 × 20 = $6320); ($6320 + $4500 = $10,820).

[475] Any operational and accounting system costs would be likely made at the fund family level, and are included in the staff's estimated costs for fund families complying with the ongoing sales charge proposal, as discussed below.

[476] This estimate is based on the following calculations: ($5000 per class × 990 classes = $4,950,000 total expenses); ($10,820 per class × 990 classes = $10,711,800 total internal time cost equivalent).

[477] *See supra* Section III.D for a further discussion of the operation of the proposed rule.

[478] As we have discussed previously, a number of funds may avoid these costs by reducing their asset-based distribution fees or by re-characterizing expenses. Although some funds in a family may be able to avoid such costs, it may be that only a few funds in the family could do so, and therefore the fund family as a whole would still incur these costs of complying with this part of our proposal. The staff has therefore chosen to be conservative and include all fund families that might be affected by the ongoing sales charge proposal in the cost estimates below.

update records. The staff estimates it would cost approximately the same amount to outsource this type of system to an outside vendor. Because a fund family's class structure generally is intimately tied to its conversion system, as discussed below, we expect that the decision to amend or create new share classes would be made in coordination with any changes to the conversion system.

(ii) Operational Changes and Modified Share Classes

Next, we describe four potential routes that we believe fund families could use to come into compliance with our proposed amendments to rule 6c-10. In addition, we describe the staff's estimates of the number of fund families that may use each route and the potential costs. These routes include: (1) Retaining existing share class structures and conversion systems; (2) updating the fund family's existing conversion system and amending the class structure; (3) updating the fund family's existing conversion system, amending the class structure, and creating new share classes; and (4) creating/purchasing a new conversion system, amending the class structure, and creating new share classes. Because these routes are general paths to compliance with our proposed amendments to rule 6c-10, we expect that the experience of each fund family would likely vary significantly from the average costs outlined below. In addition, some fund families may need to "mix and match" parts of these outlined routes to meet the particular needs of each fund within the fund family. However, we would expect that affected fund families would generally comply with the proposed amendments in one of the ways described above.

Funds would also have a variety of choices in managing shares with 12b–1 fees that have been grandfathered pursuant to proposed rule 12b–2(d). Some fund families may choose to retain grandfathered 12b–1 share classes for the period allowed, and amend those classes so that future share purchases comply with the proposed amendment to rule 6c–10 (essentially mixing shares with differing conversion dates in the same class), and then converting or exchanging the grandfathered shares into the amended classes after five years. Other fund families may decide not to grandfather 12b–1 shares and instead amend their existing classes to fully comply with the proposed amendments to rule 6c–10 for both new and existing shareholders (effectively applying the requirements of the proposal to existing shares and not taking advantage of the grandfathering provisions of proposed rule 12b–2(d)). Finally, some funds may choose to manage grandfathered shares by leaving those assets in existing classes for the period allowed, and creating new share classes for all future share purchases, and then converting or exchanging the grandfathered shares into the new classes after five years. In any event, we anticipate that fund families would choose the method that is most cost-effective and is in the best interest of the fund family and its shareholders. The method of managing share classes with grandfathered 12b–1 fees selected by the fund family is likely to influence the route that the fund family would select in complying with our proposed amendments to rule 6c–10(b), and we have included the costs of managing share classes with grandfathered fees in the staff's estimates below.[479]

Route 1: Retain Existing Share Class Structure and Conversion Systems

A fund family that sells funds with an existing class structure that already generally complies with our proposed amendments to rule 6c–10 might only need to make minor changes to its operations in response to our proposal. A fund family that does not sell C shares, sells B shares that convert at a time that is consistent with proposed rule 6c–10(b), and has a target class for converted shares (*i.e.,* a class that deducts 25 basis points or less in asset-based distribution fees), would be included in this category.[480] The costs and time expended by such a fund family to comply with the proposed amendments to rule 6c–10 would include: Reviewing the requirements of the rule (if adopted); updating fund prospectuses, SAIs, and shareholder reports to reflect the changed terminology and function of the two new types of asset-based distribution fees; reviewing and making any necessary updates to compliance policies and procedures; hiring outside counsel to perform these reviews and updates; and providing training to relevant internal personnel (*i.e.,* staff from the fund, adviser, or underwriter).

The staff estimates that approximately 15% (or 28) of the 186 fund families that may be affected would be able to comply with the proposal by making these minor changes to their operations. The staff estimates that fund families that would make these operational changes would incur approximately $20,000 in one-time costs, and 100 hours of time expended by internal personnel to implement these changes for the entire fund family. The staff estimates that the 100 hours spent by internal personnel would break down as follows: 50 hours spent by accountants and other back office personnel at $153 per hour; 30 hours spent by programmers and other IT personnel at $190 per hour; 18 hours spent by internal counsel at $316 per hour; and 2 hours spent by the board of directors at $4500 per hour, for a total internal time cost equivalent of $28,038.[481] The staff therefore estimates that the total costs for all affected fund families that use this route would be $560,000 in one-time costs and 2800 hours of internal personnel time expended at a total internal time cost equivalent of $785,064.[482]

- We request comment on these estimates and assumptions.

Route 2: Update Conversion System and Make Amendments to Class Structure

Alternatively, funds might need to make amendments to their existing share classes to comply with our proposal.[483] These funds may need to change the conversion period of their class B shares, institute a conversion period for class C shares, or make other changes to their class structure. However, the staff assumes that fund families that choose this route would not need to create new share classes, because they would already have a target class for conversions that meets the requirements of proposed rule 6c–10(b) (*e.g.,* an existing share class with

[479] Funds that amend or update existing share classes as a result of our proposal would provide notification to their existing shareholders. If the proposal is adopted, we anticipate providing a transition period of at least 18 months, which should allow most funds to provide this notification in their next regularly scheduled prospectus update, or in an annual or semi-annual report. In some cases, due to timing constraints, a fund may determine that it needs to "sticker" its registration statement and inform its shareholders of the share class changes in a separate and unscheduled communication. These funds would incur additional costs.

[480] Such a fund would be unlikely to incur any costs relating to managing shares with grandfathered 12b–1 fees because its existing class structure would already be in compliance with our proposed amendments and, thus, it would not need to maintain separate classes for shares with grandfathered 12b–1 fees.

[481] These figures are based on the following calculations: (50 hours × $153 = $7650); (30 hours × $190 = $5700); (18 hours × $316 = $5688); (2 hours × $4500 = $9000); ($7650 + $5700 + $5688 + $9000 = $28,038 total internal time cost equivalent).

[482] These figures are based on the following calculations: ($20,000 costs × 28 fund families = $560,000); (100 hours × 28 fund families = 2800); ($28,038 × 28 fund families = $785,064).

[483] Pursuant to rule 18f–3, fund share classes are required to be organized according to a written plan that is approved by the fund's directors, and thus this plan must be amended when changes are made to a share class.

12b–1 fees of 25 basis points or less). The staff expects that these fund families would not choose to create new share classes for purchases made after the compliance date of the proposal (if adopted), but would instead amend their existing classes.[484] These fund families would also have to update their conversion systems, at a previously estimated one-time cost of $100,000 and $50,000 annually. The staff estimates that approximately 50% (or 93) of the 186 fund families that may be affected would need to amend their existing share classes as a result of our proposal. The staff estimates that, on average, each fund that amends its share classes would need to amend an average of two share classes. The staff estimates that it would typically cost approximately $10,000 and 25 hours of internal personnel time to amend a share class to meet the requirements of our proposed amendments to rule 6c–10.

However, the staff expects that most fund families would amend all of the relevant share classes at the same time as part of a coordinated plan for compliance with the proposed rules, and therefore should be able to achieve significant economies of scale. Much of the work involved in amending one share class is similar to that involved in amending other classes, and if all amendments are undertaken at the same time, significant efficiencies and elimination of duplicative effort should result. The staff therefore estimates that a fund family with 35 funds (the average for fund families that have at least one fund with 12b–1 fees in excess of 25 basis points) would incur a total of $100,000 in outside expenses and 250 hours of internal personnel time expended. The time would represent approximately 140 hours spent by accountants and other back office personnel at a rate of $153 per hour, 100 hours spent by inside counsel at a rate of $316 per hour, and 10 hours spent by the board of directors as a whole, at a rate of $4500 per hour, for a total internal time cost equivalent of $98,020.[485]

These costs and time expenditures would include internal staffing and outside counsel review to establish the amended terms of the class, creating and/or amending relevant disclosure documents, amending the written plan setting forth the terms of the funds' class structure, holding a director vote on the class plan if necessary, any training expenses, costs related to amending distribution or underwriting agreements, and any costs related to altering the terms of the class on the fund or its transfer agent's systems, the costs of exchanging or converting remaining grandfathered shares into appropriate share classes after the expiration of the grandfathering period, as well as the costs of updating the fund family's operations discussed above.[486] The staff assumes that the costs of maintaining these amended share classes would be the same as the cost of maintaining current share classes, and therefore the staff estimates that funds that choose this option would incur no additional ongoing annual cost burden.

Therefore, the staff estimates that each fund family would incur $100,000 in costs and 250 hours in internal personnel time (at an internal time cost equivalent of $98,020) to amend their share classes, and an additional $100,000 in one-time costs and $50,000 in annual costs to update their conversion systems, for a total one-time cost of $200,000, annual costs of $50,000, and 250 hours of time expended for each of these fund families to comply with the ongoing sales charge portion of our proposal. Based on these estimates, the staff further estimates that all 93 potentially affected fund families that may choose this option would incur a total of $18,600,000 in one-time costs, $4,650,000 annually, and 23,250 hours in one-time internal personnel time expended at an internal time cost equivalent of $9,115,860.[487]

- We request comment on these estimates and assumptions.

Route 3: Update Conversion System, Make Significant Changes to Class Structure, and Create New Share Classes

Other fund families may need to create new share classes to comply with our proposed amendments to rule 6c-10. These fund families might need to create new share classes either because they do not have an appropriate target class for conversions (for example, if their class A shares deduct more than 25 basis points in asset-based distribution fees), or if they chose to maintain grandfathered 12b–1 assets in existing share classes and create new share classes for all future share purchases after the compliance date of the rule (if adopted).[488] In addition to creating new share classes, these fund families would also likely need to amend their existing share classes. These fund families would also need to update their conversion systems, at a previously estimated one-time cost of $100,000, and $50,000 annually.[489]

The staff estimates that the remaining 35% (or 65) of 186 potentially affected fund families with conversion systems would create new share classes in response to our proposed amendments to rule 6c–10. The staff estimates that it would cost each fund approximately $100,000 and 100 hours of internal personnel time to create a new share class.[490] These expenses would include internal staffing and outside counsel involvement to establish the terms of the new class, create and/or amend relevant disclosure documents, amend the written plan setting forth the terms of the funds' class structure, hold a director vote if necessary, any training expenses, the costs of amending distribution and underwriting agreements, the costs of exchanging or converting remaining grandfathered shares into appropriate share classes after the expiration of the grandfathering period, any costs related to implementing the new class on the fund's or transfer agent's systems, and any costs related to updating the fund's operations discussed above. The staff's estimate assumes that the costs of maintaining these new share classes would be the same as the costs of maintaining current share classes, and the staff estimates that funds that choose

[484] Instead, they would either amend existing classes to mix grandfathered 12b–1 fee shares with new purchases with differing conversion dates, or would not grandfather existing 12b–1 fees. In either case, these funds would amend existing share classes, but would not create new ones. The costs for funds that choose to create new share classes as a means of managing share classes with grandfathered 12b–1 fees or in response to our proposed amendments to rule 6c–10 are described in our discussion of route 3, below.

[485] These figures are based on the following calculations: ($153 × 140 hours = $21,420); ($316 × 100 hours = $31,600); ($4500 × 10 hours = $45,000); ($21,420 + $31,600 + $45,000 = $98,020).

[486] The costs of amending the fund family's operations, as discussed above under route 1, is included in this estimate.

[487] These figures are based on the following calculations: ($200,000 one-time costs × 93 fund families = $18,600,000); ($50,000 annually × 93 fund families = $4,650,000); (250 hours × 93 fund families = 23,250 hours); ($98,020 × 93 fund families = $9,115,860).

[488] For example, a fund might have a class A that deducts 35 basis points in asset-based distribution fees, class B shares that convert at a date later than the proposal would require, and class C shares that do not convert. This fund might need to create a new class A that deducts 25 basis points or less as a target class for conversions, and if the fund chose to maintain grandfathered assets in the existing A and C shares classes, might also create a new class A and C that meets the terms of the proposal. In addition, the fund may choose to amend the conversion requirements of the class B shares to comply with the requirements of the proposal for both new and existing shareholders ("mixing" conversion dates in the same class). This fund would be creating three new share classes and amending one other class.

[489] *See supra* Section V.D.2.c.(i).

[490] As discussed below, funds that choose this option would likely achieve significant cost savings and economies of scale by creating all new classes simultaneously. To be conservative, however, Commission staff has also estimated the costs of creating each class individually.

this option would incur no additional ongoing annual cost burden related to the class structure changes. The staff estimates that, on average, each fund that creates new share classes would need to create two new share classes and amend one additional share class (at the same cost as amending share classes discussed above).

However, as discussed previously, the staff expects that most fund families would make all necessary changes to their distribution structure as part of a coordinated plan for compliance with the proposed rules, and therefore should be able to achieve significant economies of scale and costs savings over the costs of amending or creating a single share class. For example, often, a number of funds in a family share a single prospectus, which could be amended at a single time, and the class structure could be amended with a single director vote. In light of these expected economies of scale, the staff estimates that a typical fund family would incur $800,000 in costs and 500 hours in internal personnel time to create new share classes, and $50,000 in costs and 100 hours in internal personnel time expended to amend existing share classes, for a total of $850,000 in outside costs and 600 hours of internal personnel time expended. The internal personnel time expended would include approximately 200 hours spent by programmers and other back office IT staff at a rate of $190 per hour, 200 hours spent by accountants at a rate of $153 per hour, 190 hours spent by inside counsel at a rate of $316 per hour, and 10 hours spent by the board of directors as a whole at $4500 per hour, for a total internal time cost equivalent of $173,640.[491] Including $100,000 in one-time costs and $50,000 in annual costs to update their conversion systems, the total cost for each fund family would be $950,000 in one-time costs, $50,000 in annual costs and 600 hours expended.

Based on these staff estimates, the 65 potentially affected fund families would incur a total of $61,750,000 in one-time costs, $3,250,000 in annual costs, and 39,000 hours in one-time internal personnel time expended (at an internal time cost equivalent of $11,286,600) to comply with our proposal.[492]

• We request comment on these estimates and assumptions.

Route 4: Purchase New Conversion System, Make Significant Changes to Class Structure, and Create New Share Classes

Finally, if our proposed amendments to rule 6c–10 are adopted, some funds would have to purchase or create a conversion system. As previously discussed, the staff estimates that 10% or 21 fund families that may be affected by our proposed amendments to rule 6c–10 currently do not have a conversion system, either because they only sell a single class of shares, or if they sell multiple classes of shares, none of their share classes has a conversion feature. The staff has previously estimated that it would cost approximately $250,000 in initial costs and $100,000 in annual costs to purchase or create a conversion system.

In addition to purchasing a new conversion system, these fund families would also need to create a new target class for converted shares and amend existing share classes to meet the requirements of our proposed amendments to rule 6c–10. For example, if a fund sold only class C shares that deducted asset-based distribution fees in excess of 25 basis points, the fund would need to create a new target class for converted shares. In addition, if the fund chose to maintain grandfathered 12b–1 assets in the existing class, the fund may need to create a second class of shares for future purchases. On the other hand, if the fund chose to dispense with grandfathering 12b–1 fees, it might amend the existing C class so that it complied with our proposed amendments to rule 6c–10 for both existing and new shareholders.

The staff has previously estimated that it may cost each fund approximately $100,000 and 100 hours of internal personnel time to create a new share class and $10,000 and 25 hours to amend a share class. The staff assumes that each affected fund that does not currently convert shares would have to create two new share classes and amend one additional share class to meet the requirements of the proposed amendments to rule 6c–10.

However, as discussed previously, the staff expects that most fund families would make all necessary changes to their distribution structure as part of a coordinated plan for compliance with the proposed rules, and therefore should be able to achieve significant economies of scale and costs savings over the costs of amending or creating a single share class. In light of these expected economies of scale, the staff estimates that each fund family would incur $800,000 in costs and 500 hours in internal personnel time to create new share classes, and $50,000 in costs and 100 hours in internal personnel time expended to amend existing share classes, for a total of $850,000 in outside costs and 600 hours of internal personnel time expended. The internal personnel time expended would include approximately 200 hours spent by programmers and other back office IT staff at a rate of $190 per hour, 200 hours spent by accountants at a rate of $153 per hour, 190 hours spent by inside counsel at a rate of $316 per hour, and 10 hours spent by the board of directors as a whole at $4500 per hour, for a total internal time cost equivalent of $173,640.[493] Including $250,000 in one-time costs and $100,000 in annual costs to purchase or build a conversion system, the total cost for each fund family would be $1,100,000 in one-time costs, $100,000 in annual costs and 600 hours expended.

Based on these staff estimates, the 21 potentially affected fund families would incur a total of $23,100,000 in one-time costs, $2,100,000 in annual costs, and 12,600 hours in one-time internal personnel time expended (at an internal time cost equivalent of $3,646,440) to comply with our proposal.[494]

• We request comment on these estimates and assumptions.

E. Ongoing Sales Charge: Investors

Investors currently appear to have difficulty understanding 12b–1 fees and the activities and services for which they are used.[495] Our proposal would differentiate between the two constituent parts of current 12b–1 fees (asset-based sales charges and service fees). It would allow funds to use a limited amount of assets as a marketing and service fee, and deduct any excess amounts over the marketing and service fee as an ongoing sales charge. The renamed fees would appear separately in an amended fee table in the prospectus under the headings "marketing and service fees" and "ongoing sales charge."

[491] These figures are based on the following calculations: ($190 × 200 hours = $38,000); ($153 × 200 hours = $30,600); ($316 × 190 hours = $60,040); ($4500 × 10 hours = $45,000); ($38,000 + $30,600 + $60,040 + $45,000 = $173,640).

[492] These figures are based on the following calculations: ($950,000 one-time costs × 65 fund families = $61,750,000); ($50,000 annually × 65 fund families = $3,250,000); (600 hours × 65 fund families = 39,000 hours); ($173,640 × 65 fund families = $11,286,600).

[493] These figures are based on the following calculations: ($190 × 200 hours = $38,000); ($153 × 200 hours = $30,600); ($316 × 190 hours = $60,040); ($4500 × 10 hours = $45,000); ($38,000 + $30,600 + $60,040 + $45,000 = $173,640).

[494] These figures are based on the following calculations: ($1,100,000 one-time costs × 21 fund families = $23,100,000); ($100,000 annually × 21 fund families = $2,100,000); (600 hours × 21 fund families = 12,600 hours); ($173,640 × 21 fund families = $3,646,440).

[495] *See supra* Section II.E.

By more clearly identifying the two types of asset-based distribution fees, we expect that the proposal would make it easier for investors to understand when they are paying a sales charge. In addition, these proposed changes to the fee table and the revised narrative disclosure in the prospectus should also help investors better understand the services they are paying for through the marketing and service fee and the ongoing sales charge. This improved understanding should help investors more easily compare sales charges in alternative share classes and competing funds and, therefore, choose the sales charge option that best meets their investment needs. We anticipate that this would lead investors to choose lower priced offerings of funds or share classes that offer comparable services, which should lead to greater price competition among funds and lower sales charges.

Investors empowered with this information may invest differently. Although we cannot predict investor behavior, we assume that if offered lower prices for the same services, or provided with better information regarding the distribution services received, many investors would choose to move their investments to, or make new investments in, a fund or share class with lower asset-based distribution fees or loads. Conversely, investors may decide to avoid funds that charge high asset-based distribution fees if they believe that they would not get, or want, commensurate levels of service. We expect that investors who choose to shift invested assets would only move assets that are not subject to a CDSL, or on which they had not already paid a front-end load. Thus, we do not anticipate that investors would shift assets invested in class A or B shares if our proposal were adopted. In addition, our proposal would require that assets held for long periods of time in level load classes (for example, class C shares) eventually convert to classes that do not deduct an ongoing sales charge, which would result in a net movement of assets out of these level load classes into lower cost classes.

Commission staff estimates that approximately $686 billion in total net assets currently are invested in level load share classes, and that approximately $3.4 billion in 12b–1 fees are deducted from these assets fees annually, for an average 12b–1 fee as a percentage of total net assets in these classes of 50 basis points.[496] The staff further estimates that if our proposed rule and disclosure amendments are adopted, improved investor understanding of distribution related charges would result in an aggregate total of between five and ten percent of assets currently invested in level load classes (for example, C shares) moving to share classes (within the same fund or in a different fund) that do not deduct an asset-based distribution fee. If five percent of the $686 billion in assets in these classes (or $34 billion) were moved to share classes without asset-based distribution fees, at an annual 12b–1 fee rate of 50 basis points, investors would save approximately $170 million annually.[497] If ten percent of the $686 billion in assets in these classes (or $68 billion) were moved to share classes without asset-based distribution fees, investors would save approximately $340 million annually.[498] Over a ten-year period, this would represent a potential savings of between $1.7 billion and $3.4 billion to investors in asset-based distribution fees that they would otherwise have paid, but would avoid because of better informed decision making.

If our proposal is adopted, we would provide a grandfathering provision for current 12b–1 share classes for a five-year period. However, at the end of that five-year period, all shares that are currently subject to a 12b–1 plan would need to be converted or exchanged into a class that does not deduct an ongoing sales charge and with a marketing and service fee that is no higher than the 12b–1 fee in effect in the previous fiscal year. This expiration of the grandfathering period would effectively time limit level load share classes as they exist today. All assets that remain in level load share classes after the expiration of the grandfathering period would need to be converted to a class that does not deduct an ongoing sales charge; effectively a class that charges 25 basis points or less in asset-based distribution fees. This conversion or exchange would benefit investors who remained in these level load classes at the end of the grandfathering period to the extent that the asset-based distribution fees on the share class they are converted into is lower than the current 12b–1 fee.

The staff estimated above that the average 12b–1 fee on level load share classes is 50 basis points. Because no ongoing sales charge could be charged on the converted or exchanged shares and the highest marketing and service fee allowed under the proposal is 25 basis points, the staff estimates that investors who remain in the grandfathered 12b–1 share class would save 25 basis points a year after the expiration of the grandfathering period. However, as discussed above, the staff estimates that some investors may move their existing level load assets to lower load classes as a result of this proposal, and further reductions in the assets of existing level load share classes may occur through redemptions or reduced investment. The staff estimates that at the expiration of the grandfathering period in five years, approximately 50% of the $686 billion (or $343 billion) in existing level load share class assets will remain. Upon the conversion or exchange of these assets into share classes that do not deduct an ongoing sales charge, the staff estimates that investors in these classes will save 25 basis points a year (the asset-based distribution fees charged in excess of the amount permitted as a marketing and service fee), or a total of $857,500,000 annually.[499]

In addition, if our proposal is adopted, we estimate that net new investments in level load fund classes would decline as investors choose share classes with no or lower sales charges, whether in the form of an asset-based distribution fee, front-end load or CDSL, and as a result of requirements in the proposal to eventually convert shares that charge an ongoing sales charge into a class that does not deduct such a fee at a set time. The staff estimates net new investments in level load fund classes may decline between ten and twenty percent as a result of our proposal (with a commensurate increase in net new investments in no or low load funds). Based on a review of Lipper's LANA Database and data filed with the Commission, the staff estimates that approximately $52 billion in net new cash flowed to level load classes in 2009, with those level load classes charging an average asset-based distribution fee of approximately 50 basis points. Assuming that there would be similar net cash flow to these classes in future years, if ten percent of the net new cash flow to level load classes (or

[496] We recognize that some portion of the 50 basis points may represent service fees and that an investor who shifts their assets from a level load fund class may still select a fund class that charges a service fee or a reduced ongoing sales charge. However, for purposes of this analysis, the result of the staff's estimates represent the total cumulative effect of all asset movement from level load funds to no-load or lower load funds.

[497] This estimate is based on the following calculation: ($34,000,000,000 × 0.005 = $170,000,000).

[498] This estimate is based on the following calculation: ($68,000,000,000 × 0.005 = $340,000,000).

[499] This estimate is based on the following calculation: ($343,000,000,000 × 0.0025 = $857,500,000).

$5.2 billion) is invested in classes that do not charge asset-based distribution fees, Commission staff estimates that investors would save approximately $26 million annually.[500] If twenty percent of the net new cash flow to these classes (or $10.4 billion) is instead invested in classes that do not charge asset-based distribution fees, Commission staff estimates that investors would save approximately $52 million annually.[501] Over a ten-year period, this represents potential savings of between $260 million and $520 million for investors who might be better served in other classes with a more appropriate level of service for their needs or wants.

As discussed above, we expect that one result of our proposal would be a net shift by investors to lower load share classes. As part of this net shift, we would expect that some investors might determine that they need or want continuing high levels of service, and may choose to move their assets out of level load share classes and into fee-based or wrap fee accounts, which may have higher expenses than the level load share classes the investor had previously owned.[502] These investors may pay higher expenses as a result of this choice, but would presumably also receive higher levels of service, and the ability to trade between funds in different fund families without paying additional loads. The proposal would provide investors with better information regarding the asset-based distribution fees they pay, which should enhance the ability of investors to select the type of account or method of paying distribution fees that is best for them, even if some investors choose to invest through more costly methods as a result.

There is some question as to whether a reduction in asset-based distribution fees paid by investors would be purely a benefit of the proposal resulting from markets that are more efficient and investors making better-informed investment choices, or whether it would represent a transfer of assets from investment managers or broker-dealers to investors. The goals of this rulemaking include providing better and more transparent information to investors regarding the asset-based distribution fees they pay, enabling investors to more efficiently allocate their investments and meet their investment goals, and promoting competitive markets. In light of these goals, we believe that any reduction in asset-based distribution fees paid by investors that is due to better-informed investment decisions made as a result of this proposal should be counted as a benefit.

- Do commenters agree that the estimated reductions in sales charges investors would pay are a benefit of this proposal? We further request comment on the estimates and assumptions we have made in this section regarding the benefits of our proposal to investors and the likelihood that a certain portion would invest in funds with lower sales charges. In particular, we request comment on the quantitative estimates the staff has made and request that commenters provide any quantitative data they may have on the likely behavior of investors in response to our proposals.

Currently, funds with class C shares typically do not charge a CDSL after the first year, which allows the potential for some short-term shareholders in C share classes to redeem soon after purchase and pay less asset-based distribution fees compared to longer-term shareholders in the same share class. Essentially, the longer-term C class shareholders subsidize some of the distribution expenses of the shorter-term shareholders. Funds typically structure their C shares in this manner to attract investors who may not want to be committed to a long-term investment in a fund, and who may pay significantly more or less in distribution costs depending on how long they remain invested in the fund. Funds also take the risk that the distribution expenses associated with short-term investments in C shares will not be balanced out by long-term C class shareholders who may pay significantly more in asset-based distribution fees than if they had instead invested in some other class.

Proposed new rule 12b–2 and amended rule 6c–10 would have the effect of limiting the total asset-based distribution fees that long-term shareholders would pay, and may thereby alter the economic incentives involved in structuring a C share class without a CDSL. If the proposal is adopted, some funds may reconsider the economics of C share classes, and could restructure those classes, perhaps imposing a CDSL similar to B share classes. If this occurs, this could effectively eliminate the opportunity for some short-term C class shareholders to avoid paying a portion of the distribution expenses associated with their investment. However, it would also effectively eliminate the potential for some longer-term shareholders in C classes to subsidize those costs by paying significantly more in asset-based distribution fees over time. One of the goals of this rulemaking is to help ensure more equity between shareholders in the payment of fund distribution expenses. However, we acknowledge that achieving this more equitable treatment between shareholders may come at a cost to certain short-term shareholders whose distribution expenses would no longer be subsidized by long-term C class shareholders.

We request comment on the likelihood of funds restructuring their C share classes as discussed above, and any potential impact such a restructuring might have on both long- and short-term investors in those classes.

- In particular, we request comment on any quantitative estimates of the amount of additional asset-based distribution fees that short-term investors may pay and the amount of such fees that long-term shareholders may save as a result of this proposal.

F. Ongoing Sales Charge: Intermediaries

Broker-dealers and other intermediaries may also be affected by the proposed limitations on ongoing sales charges. Currently, FINRA rules do not limit the total amount of asset-based sales charges that an individual fund investor may pay. NASD Conduct Rule 2830 limits the aggregate amount of these fees and other sales loads that a fund may pay to its distributor, to a percentage of the amount of gross new sales of fund shares. Because most funds continually sell new shares (and thus have new sales), we understand that most funds do not reach this limit. As a result, broker-dealers generally may receive asset-based sales charges on an investment in fund shares for as long as the investor holds the shares (or, in the case of B shares, until the shares convert). The conversion requirements of our ongoing sales charge proposal would limit the amount of asset-based distribution fees that an individual investor would pay to an amount that is tied to the front-end load of the fund, or the NASD sales charge limits.

Our proposed amendments to rule 6c–10 may have the effect of reducing the total compensation that intermediaries receive from the sale of certain types of shares (such as B, C, or R shares). However, as discussed previously, any reduction in compensation would be

[500] This estimate is based on the following calculation: ($5,200,000,000 × .005 = $26,000,000).

[501] This estimate is based on the following calculation: ($10,400,000,000 × .005 = $52,000,000).

[502] Other investors, however, would move their assets into lower cost funds, as discussed previously. Level-load share classes typically deduct 100 basis points or less in asset-based distribution fees annually. Fee-based or wrap accounts often charge higher fees (between 100 and 200 basis points annually) but the broker-dealers that offer wrap accounts also provide additional services and transaction options for their clients.

experienced as reduced costs for investors because distribution charges that are not deducted from fund assets would be retained by shareholders.

The amount of any reduction in intermediary compensation that might result is speculative.[503] For example, many class B shares currently convert on a schedule that generally meets, or come close to meeting, the requirements we propose today. Therefore, we anticipate that complying with the proposal's requirements with respect to class B shares would result in, at most, a minor reduction in compensation to broker-dealers. Class C shares (which are generally described in fund prospectuses as being suitable for short-term investments) do not convert, but if they are sold as short-term investments, we believe they generally would not be held long-term. Based on average holding periods for funds generally, we expect that only a limited portion of outstanding class C shares would be held long enough for any asset-based distribution fees on class C shares to exceed the proposed ongoing sales charge limit.[504]

Funds with class R shares or similar classes (which typically are sold in tax-advantaged accounts and are intended as long-term investments) may charge 12b–1 fees in amounts exceeding 25 basis points that would become subject to the limitations on ongoing sales charges. These share classes often use 12b–1 fees to pay for associated recordkeeping and shareholder services, as well as for distribution expenses. As we have discussed above, some funds may be in a position to identify those non-distribution expenses and re-characterize them as administrative fees, thereby avoiding the need to impose an ongoing sales charge without reducing distribution payments to intermediaries. To the extent that any portion of 12b–1 fees currently charged on class R shares must be considered to be an ongoing sales charge, any estimate reduction in compensation resulting from our proposal would be speculative, because as discussed above, we anticipate that the lost revenue may be recovered through other sources.[505]

If intermediaries experience a significant reduction in distribution compensation, would they be likely to renegotiate revenue sharing agreements and recover some or all of the lost compensation through these sources? Would intermediaries be likely to receive less compensation based on the ongoing sales charge limits of our proposal? How much less? Would they make up any or all of any such loss through revenue sharing agreements? Do commenters believe that this reduction in compensation should be treated as a cost of the proposal, considering that any reduction would come with a corresponding increase in the assets held by investors?

Intermediaries such as broker-dealers, banks, and insurance companies may also incur costs in connection with our proposals.[506] For example, these intermediaries may need to enter into new or amended distribution agreements with the funds that they sell, enhance their recordkeeping systems, update sales literature, and provide additional training to their sales representatives regarding the new regulatory framework for mutual fund asset-based distribution fees and the suitability of different share classes for their clients. The staff estimates that there are approximately 4,770 of these types of intermediaries, and that approximately 40% of these intermediaries (or 1,908) receive 12b–1 fees, and therefore would be affected by our proposal.[507] The staff estimates that, on average, each affected intermediary would expend $50,000 in costs and 100 hours of internal personnel time in response to our proposals.[508] This internal time would include approximately 75 hours spent by professionals such as compliance personnel at a rate of $210[509] per hour and 25 hours spent by inside counsel at a rate of $316 per hour, at a total internal time cost equivalent of $23,650.[510] Therefore, the staff estimates that all intermediaries may incur approximately $95,400,000 in one-time costs and 190,800 hours (at an internal time cost equivalent of $45,124,200 as a result of the proposed new rule and rule amendments).[511]

In addition, our proposal may require intermediaries such as retirement plan administrators or other omnibus account record-keepers to begin tracking share lots and managing share conversions. This change may require these intermediaries to invest in new systems or enhance their current recordkeeping and back office systems. If a retirement plan offers fund classes that deduct an ongoing sales charge, the proposal would require such shares purchased by plan participants to eventually be converted to a class that does not deduct an ongoing sales charge. This conversion requirement would create costs for retirement plan record-keepers because we understand that currently, most record-keepers do not maintain individual participant share histories. Record-keepers for plans that offer shares classes with an ongoing sales charge would need to begin tracking the date of purchase of each share lot for each participant, and tie that share history to the appropriate conversion date. In addition, plans currently usually only have a single class of shares for each fund offered within the plan. If our proposal is adopted, however, if the single class that is offered within the plan deducts an ongoing sales charge, a second class of shares for each fund (*i.e.* a target class for converted shares) would have to be added to the record-keeper's systems, effectively adding more complexity and costs to their operations. For example, as a result of this increase in the number of shares classes, record-keepers might

[503] The staff has estimated some potential effects of our rulemaking on investor behavior (and consequent reduction in intermediary compensation) in Section V.E of this Release, *supra.*

[504] Comprehensive data on the typical retention period for C shares is not available, but the typical fund shareholder only holds fund shares for approximately 3–4 years. Based on a front-end load equal to 6%, a C share investor could pay an ongoing sales charge of 75 basis points for approximately 8 years before reaching the ongoing sales charge limits we propose today. This holding period would be more than double the typical holding period for all fund shares, and particularly long for C shares, which funds disclose as appropriate for short-term holding periods.

[505] As discussed above, broker-dealers often receive payments from fund advisers known as "revenue sharing," which supplements the compensation they receive for distributing fund shares. *See supra* note 65.

[506] The costs for retirement plan record keepers are discussed below, and the costs for transfer agents are included in the previously discussed costs for mutual funds above.

[507] This number consists of the following: 2,203 broker-dealers classified as specialists in fund shares, 167 insurance companies sponsoring registered separate accounts organized as unit investment trusts, approximately 2,400 banks that sell funds or variable annuities (the number of banks is likely over inclusive because it may include a number of banks that do not sell registered variable annuities or funds, or banks that do their business through a registered broker-dealer on the same premises). This number may be over or under inclusive, because the actual number of intermediaries that would be affected would vary based on the intermediary's business model and whether the intermediary sells funds that deduct 12b–1 fees.

[508] We recognize that this average will likely vary significantly, with large intermediaries incurring many times this cost estimate and small intermediaries likely incurring far less.

[509] The staff has based the hourly cost estimates for time spent by intermediaries in this section on SIFMA's *Management & Professional Earnings in the Securities Industry 2009, supra* note 407, because the staff believes the hourly costs are comparable.

[510] These figures are based on the following calculations: ($210 × 75 hours = $15,750); ($316 × 25 hours = $7,900); ($15,750 + $7,900 = $23,650).

[511] These estimates are based on the following calculations: (1,908 intermediaries × $50,000 = $95,400,000 in costs); (1,908 intermediaries × 100 hours = 190,800 hours expended); (1,908 intermediaries × $23,650 = $45,124,200).

need to increase the size of their participant statements, spend more time answering participant questions, process more trades, and manage operational complexities related to multiple share classes (such as allocating withdrawals between share classes for participant loans and rebalancings, identifying the correct conversion date for reinvested dividends, and other issues).

Only record-keepers that provide services to retirement plans that offer fund share classes with 12b–1 fees in excess of 25 basis points would be affected by our proposal.[512] The staff estimates that there are approximately 2,025 intermediaries that provide recordkeeping for retirement plans, and that approximately 25% (or 506) of those record-keepers provide services to plans that offer fund share classes with 12b–1 fees in excess of 25 basis points.[513] The staff estimates that approximately 35% (or 177) of the 506 affected record-keepers would choose to upgrade their systems to manage ongoing sales charges, while the other 65% (or 329) would choose to do business only with plans that offer funds without an ongoing sales charge, and thus avoid the costs discussed below.[514] The staff estimates that it would cost a record-keeper approximately $1,000,000 in one-time costs and $1,500,000 annually to manage ongoing sales charges for the plans they service.[515] These expenses would include, but not be limited to, expenses related to enhancing computer software to begin tracking and aging share histories and multiple share classes, additional computer hardware and storage costs for the increased volume of information related to participant positions, larger participant statements (and higher mailing costs), increased time spent providing service to participants, and costs related to managing the operational complexities discussed above. Therefore, the staff estimates that intermediaries that provide recordkeeping services to retirement plans may incur a total one-time cost of $177,000,000 and an annual cost of $265,500,000 in complying with our proposal.[516]

As discussed previously, under our proposed rulemaking, ongoing sales charges would qualify as transaction based compensation, and intermediaries who receive the ongoing sales charge may need to register as broker-dealers under section 15 of the Exchange Act unless they can avail themselves of an exception or exemption from registration.[517] The proposed rulemaking could potentially lead to some intermediaries who are currently receiving 12b–1 fees but that are not registered as broker-dealers under section 15 of the Exchange Act to either no longer receive asset-based distribution fees or to register as broker-dealers. However, we understand that virtually all advisers and other intermediaries that currently receive 12b–1 fees in excess of 25 basis points (thus qualifying as an ongoing sales charge) already associate themselves with registered broker-dealers, either by registering themselves, or by becoming an independent contractor registered representative of a registered broker-dealer. Therefore, we do not anticipate that, if our proposal is adopted, any intermediaries who are currently receiving 12b–1 fees would newly register as broker-dealers, and thus incur the costs associated with registration.

We request comment on all of the estimates and assumptions made in this section.

• Is our understanding correct? Would the proposed rulemaking in fact require any intermediaries who are currently receiving 12b–1 fees to register as a broker-dealer? In particular, we request comment on what types of intermediaries, if any would be affected, and if they are affected, how many would be required to register or no longer receive ongoing sales charges. If intermediaries are required to register, what kind of costs would they incur? We currently estimate that any new entities registering as broker-dealers would incur a time burden of 2.75 hours to complete Form BD.[518] Are there other costs that would be implicated by broker-dealer registration? Would other burdens be incurred and, if so, what are those burdens? What one-time and on-going costs, if any, would be incurred? We request comment on the estimates and assumptions we have made in this section.

G. Disclosure

The proposal would make the following changes to the disclosure requirements:

• Amend Form N–1A to replace the current line item for 12b–1 fees in the fee table and statement of operations with two new line items ("Marketing and Service Fee" and "Ongoing Sales Charge") and revise most of the current disclosure in the prospectus and SAI related to the discussion of 12b–1 plans (which would no longer exist) and the dollar amounts spent under the plans for different distribution activities;

• Eliminate the periodic reporting requirement related to 12b–1 plans in Form N–SAR, the annual and semi-annual reporting form used by mutual funds;

• Amend the statement of operations for fund income and expenses in Regulation S–X to conform to our proposal;

• Amend Forms N–3, N–4, and N–6 to conform to our proposed changes; and

• Provide better proxy disclosures for shareholder votes on asset-based distribution fees.

These proposed disclosure changes would provide a number of benefits, including providing more descriptive disclosure of the use and amount of asset-based distribution fees deducted by funds in prospectuses and SAIs, providing greater transparency of these fees to investors, removing requirements that would become outdated, and conforming disclosure requirements to our proposal. We have discussed these

[512] Record-keepers for plans that only offer funds with 12b–1 fees of 25 basis points or less would be generally unaffected by our proposal, because they would not need to change their systems to manage the ongoing sales charge and its related multiple share classes and conversions.

[513] This includes 225 bank, mutual fund, and insurance record-keepers, and an additional 1,800 third party administrators that provide some recordkeeping for the plans they administer. The number of participant accounts serviced by these record-keepers varies widely, with some servicing more than ten million accounts, and others only providing service to a few hundred or thousand accounts. The costs we provide here are estimates for the average record-keeper, and we acknowledge that the larger firms will likely incur significantly higher costs, while the smaller firms may incur far less.

[514] These funds might include funds that have re-assessed the asset-based distribution fees they charge and restructured their fees to identify non-distribution services that could be paid separately from the asset-based distribution fee limits of our proposal, in the manner discussed in Section V.D.2.b of this Release, *supra.*

[515] The staff assumes that record-keepers would continue to receive approximately the same amount of compensation for the services they provide. Record-keepers currently often receive some or all of their compensation from 12b–1 fees deducted from participant funds. The staff expects that much of the compensation that is currently paid to record-keepers through a 12b–1 fee in excess of the marketing and service fee (which would be an ongoing sales charge that would eventually end and no longer be able to pay for recordkeeping services) may be re-assessed and paid as an ordinary fund expense, and not be subject to the limits on asset-based distribution fees contained within our proposal.

[516] These estimates are based on the following calculations: (177 record-keepers × $1,000,000 one-time costs = $177,000,000 in one-time costs); (177 record-keepers × $1,500,000 in annual costs = $265,500,000 in annual costs).

[517] *See supra* note 168.

[518] Form BD is the application form used by entities to apply to the Commission for registration as a broker-dealer. *See* Proposed Collection; Comment Request (Apr. 20, 2010) [75 FR 22638 (Apr. 29, 2010)] (providing estimates of and seeking comments on compliance burden of Form BD).

benefits in detail previously in this Release in Sections III.I and III.M above. These benefits include providing clearer disclosure of the amount and use of asset-based distribution fees, eliminating potentially confusing or unnecessary disclosure, and providing better descriptions of the fees. The amendments would provide investors access to more relevant and transparent information that could help guide their investment making decision when considering whether to invest in a fund that deducts asset-based distribution fees. As discussed below, the staff estimates that there would be no additional ongoing costs as a result of these disclosure changes, and in fact, those ongoing costs may decrease.

1. Revised Fee Table, Prospectus, and SAI Disclosure

The proposal would require funds to eliminate the current line item titled "Distribution and/or Service (12b–1) Fees" and add, as necessary, two items for the fees permitted under the proposal—"Marketing and Service Fee" and "Ongoing Sales Charge." Funds that do not currently charge asset-based distribution fees would not be affected by these proposed amendments. The staff estimates that funds that charge asset-based distribution fees would be able to complete the revised fee table in the same amount of time, and for the same cost because the revised fee table only includes data that is readily available when the fund regularly updates the fee table, and does not include any new information. The revised fee table would not be significantly longer, and would instead simply include a new line item, which is a breakdown of an existing line item, that was already known when the fee was instituted.[519] Therefore, the staff estimates that the proposed new line items in the fee table would not increase costs or the amount of time required to complete Form N–1A, either initially or when submitting a post-effective amendment.

The proposal would also significantly revise the disclosure required for funds with 12b–1 fees in the prospectus narrative and in the SAI. These proposed amendments would eliminate many disclosures that would become outdated or irrelevant based on our proposed rule changes, including some of the most detailed disclosures of the dollar amount the fund spends on each distribution activity. However, some of the other disclosure requirements regarding asset-based distribution fees currently in Form N–1A would be retained in the same or similar form.[520] Thus, we anticipate that the proposed amendments would reduce the amount of time needed to provide disclosure on asset-based distribution fees on an ongoing basis, although some one-time costs may be incurred to initially revise and update the prospectus to conform its description regarding asset-based distribution fees to the proposed new framework.

In our most recent Paperwork Reduction Act submission for Form N–1A, the staff estimated that for each fund portfolio or series, the initial filing burden is approximately 830.47 hours at a cost of $20,300, and the post-effective amendment burden is approximately 111 hours at a cost of $8894. This includes time spent by inside counsel, back office personnel, compliance professionals, and others in filling out the form. The costs include that of outside counsel to prepare and review these filings. We assume that only funds that charge asset-based distribution fees would be affected by our proposed amendments to Form N–1A. The staff estimates that, each year, there are approximately 7367 funds with 12b–1 plans that file post-effective amendments.

The staff estimates that our proposed amendments would result in time savings of approximately 10 hours for each portfolio's initial filing (for a new total estimate of 820.47 hours) and of 1 hour for each post-effective amendment (for a new total estimate of 110 hours). The staff further estimates that the amendments would reduce costs spent on outside counsel, and other costs associated with completing Form N–1A, by $500 for each initial filing (for a new total estimate of $19,800) and $150 for each post-effective amendment (for a new total estimate of $8744). In addition, the staff estimates that each fund would incur a total one-time cost of $2000 and a one-time time expenditure of 10 hours of attorney time at a rate of $316 per hour to initially revise their post effective amendments to Form N–1A to meet the requirements of the proposed amendments for the first time.

The staff estimates that, in each year following the effective date of the proposed amendments, 300 additional funds with asset-based distribution fees would file an *initial* Form N–1A. Based on these estimates, the staff estimates that funds would save a total of 3000 hours (at an internal time cost equivalent of $948,000)[521] and $150,000 when submitting initial Form N–1A filings each year.[522] In addition, the staff anticipates that funds would save approximately 7367 hours (at an internal time cost equivalent of $2,327,972)[523], and $1,050,050 annually when preparing post-effective updates to Form N–1A.[524] Finally, the staff estimates that all funds with asset-based distribution fees would incur a total one-time expenditure of 73,670 hours (at an internal time cost equivalent of $23,279,720) and a cost of $14,734,000 when preparing post-effective amendments to comply with the proposed amendments for the first time.[525]

- We request comment on these estimates and assumptions.

2. N–SAR Periodic Reporting

Our proposal would amend the instructions to Form N–SAR, which currently requires funds to respond to a series of questions regarding their 12b–1 plans. Form N–SAR is the form that registered investment companies use to make periodic reports to the Commission. Our proposed amendments would add an instruction to Form N–SAR to disregard, for funds that no longer have 12b–1 plans, four questions (Items 41–44) that relate to the operation of rule 12b–1 plans (because they would be irrelevant in light of our proposed new framework for asset-based distribution fees). However, funds that maintain grandfathered fund classes would continue to respond to these items.

The staff estimates that there are approximately 1292 management investment companies that respond to Items 41–44 of Form N–SAR. The staff estimates that our proposed amendments would reduce the time it takes funds that do not have grandfathered share classes to complete

[519] There are two types of Form N–1A filings; (i) Initial filings, and (ii) annual post-effective amendments. Funds usually incur significantly more time and incur greater costs when first registering a fund under their initial N–1A filings than when filing their annual post-effective updates. Therefore, the staff separately estimates the burden for each type of filing.

[520] *See* Section III.J, *supra*.

[521] This estimate is based on the following calculation: (300 new filers × 10 hours savings = 3,000 hours in total savings); (3,000 hours × $316 per hour = $948,000).

[522] This estimate is based on the following calculations: (300 new filers × $500 savings = $150,000 total savings).

[523] This estimate is based on the following calculation: (7,367 amendments × 1 hour savings = 7,367 hours in total savings); (7,367 hours × $316 per hour = $2,327,972).

[524] This estimate is based on the following calculations: (7,367 amendments × $150 savings = $1,105,050 total savings).

[525] This estimate is based on the following calculations: (7,367 amendments × 10 hours expended = 73,670 hours); (73,670 hours × 316 per hour = $23,279,720); (7,367 amendments × $2,000 costs = $14,734,000 total one-time costs).

Form N–SAR by 0.25 hours, and that there would be no change for funds that maintain grandfathered share classes. The staff estimates that, if these amendments are adopted, in the first three years after adoption, approximately 20% of these 1292 management investment companies (or 258) would no longer maintain grandfathered share classes and would then experience the estimated savings, while the remaining 80% (or 1034) would continue to have grandfathered share classes and respond to these items. Because Form N–SAR is completed twice a year, the staff estimates that each respondent would save approximately 0.5 hour annually (at an internal time cost equivalent rate of $316 per hour). The staff therefore estimates that our proposed amendments to Form N–SAR would result in total incremental time savings of approximately 129 hours (with a total internal time equivalent cost savings of $40,764) [526] annually.

• We request comment on these estimates and assumptions.

3. Regulation S–X

As discussed in Section III.L of this Release, we are proposing changes to rule 6–07 of Regulation S–X, which requires funds to file a statement of operations listing income and expenses, and state separately all amounts paid in accordance with a 12b–1 plan. Our proposal would conform the disclosure requirement to the terms of our proposed new rule and rule amendments regarding asset-based distribution fees, by requiring that funds state separately amounts charged for marketing and service fees and ongoing sales charges.

Our understanding is that funds already have information on asset-based distribution fees available in order to prepare the statement of operations as we have proposed. Funds analyze this information as a matter of course for ordinary business and tax reasons, and therefore our proposed changes to Regulation S–X would not require the preparation of new information. Accordingly, the staff estimates that our proposed changes to Regulation S–X would not change the amount of time or the costs required for funds to prepare their statements of operations under the regulation.

• We request comment on these estimates and assumptions.

4. Form N–3, N–4, and N–6

The proposal would revise the currently required disclosure for 12b–1 plans in the prospectus narrative and in the SAI of Form N–3. These proposed amendments would eliminate disclosures that would become outdated or irrelevant based on our proposed rule changes, including some of the most detailed disclosures of the exact dollar amount the registrant spends on each distribution activity. However, much of the general disclosures regarding asset-based distribution fees currently in Form N–3 would be retained in the same or similar form.[527]

In our most recent Paperwork Reduction Act submission for Form N–3, the staff estimated that for each portfolio, the initial filing burden is approximately 922.7 hours at a cost of $20,300, and the post-effective amendment burden is approximately 154.7 hours at a cost of $7650. This hourly burden includes time spent by in-house counsel, back office personnel, compliance professionals, and others in preparing the form. The costs include that of outside counsel to prepare and review these filings.

The staff assumes that only registrants that charge asset-based distribution fees would be affected by our proposed amendments to Form N–3. Based upon a review of filings with the Commission, the staff estimates that 1 registrant that currently files on Form N–3 charges asset-based distribution fees, and would file a post effective amendment. The staff estimates that it would cost this registrant approximately $2000 in one-time costs (for outside legal counsel drafting and review) and require an expenditure of 10 hours in internal personnel time (at an internal time cost equivalent rate of $316 per hour) to revise its prospectus to comply with the proposed amendments. The staff further estimates that the proposed amendments to Item 21 and instruction 5 of Item 26 would result in time savings when completing a post-effective amendment of Form N–3. The staff estimates that this registrant would save approximately 1 hour (at an internal time cost equivalent of $316 per hour) annually as a result of the proposed amendments.

The staff further estimates that no new registrants that file on Form N–3 are likely to charge asset-based distribution fees under proposed rule 12b–2 and the proposed amendments to rule 6c–10. Accordingly, the staff estimates that there will be no other changes in burden hours or costs as a result of the proposed rule and rule amendments.

• We request comment on any of these estimates or assumptions.

Our proposal would also amend Forms N–4 and N–6 to conform them to the new rule and rule amendments that we are proposing today.[528] The proposed form amendments would replace references to rule 12b–1 with references to proposed rules 6c–10(b), 12b–2(b) or 12b–12(d), as appropriate. We expect this would benefit investors because it would more accurately describe these fees.

The staff estimates that the proposed amendments to these forms would not change current estimates of the amount of time or costs associated with completing the forms because they are primarily technical and only conform the disclosure to the proposal. Therefore, we estimate no costs will result from these proposed Form N–4 and N–6 changes.

• We request comment on these estimates and assumptions.

5. Streamlined Proxy Procedure

Our proposal would eliminate a number of disclosures in Schedule 14A (the form for proxy statements) that would become irrelevant in light of the proposed rule and rule amendments.[529] We anticipate that the proposed amendments would result in cost savings to funds that prepare such proxies when obtaining shareholder consent to increase or implement marketing and service fees.

Funds that rely on proposed rule 12b–2(d) would not be permitted to institute new 12b–1 plans or increase the rate of a 12b–1 fee under an existing plan after the rule's compliance date, and therefore they would no longer solicit proxies in relation to their 12b–1 plans. Proposed rule 12b–2(b) would require a shareholder vote and attendant proxy solicitation when a fund institutes or increases a marketing and service fee in existing share classes.[530]

Commission staff estimates that approximately 3 funds would solicit proxies each year for the purposes of implementing or increasing a fee under

[526] This estimate is based on the following calculation: (258 × 0.5 hours = 129 hours); (129 hours × $316 per hour = $40,764).

[527] *See supra* Section III.L.

[528] Form N–3 is used by separate accounts offering variable annuity contracts that are registered as management investment companies. Form N–4 is used by separate accounts offering variable annuity contracts and are registered as unit investment trusts. Form N–6 is used by separate accounts offering variable life insurance contracts and are registered as unit investment trusts.

[529] *See* proposed Item 22 of Schedule 14A.

[530] As discussed in Section III.N.4 of this Release, *supra,* we would not require a shareholder vote if a 12b–1 fee is relabeled a marketing and service fee, provided the fee is 25 basis points or less and is not increased.

proposed rule 12b–2(b) (the same number that we have previously estimated would solicit proxies under rule 12b–1). Funds typically hire outside legal counsel and proxy solicitation firms to prepare, print, and mail these proxies. For each of these 3 funds, the staff estimates that our proposed amendments to Schedule 14A would result in an incremental burden reduction of 3 hours of internal personnel time (at an internal time cost equivalent rate of $316 per hour) and reduced costs of $400 for the services of outside professionals. The staff therefore estimates that these amendments will reduce the total annual costs of soliciting proxies and completing Schedule 14A by approximately 9 hours of internal personnel time (3 funds × 3 hours) at a internal time cost equivalent of $2,844 [531] and approximately $1200 (3 funds × $400) for the services of outside professionals.

H. Account-Level Sales Charge Alternative

Proposed rule 6c–10(c) would provide funds the option of offering a class of fund shares that could be sold by dealers with sales charges set at negotiated rates. The sales charge could vary in amount, or time of payment, and could better reflect services provided by the broker. We assume that a limited number of funds would choose to rely on this exemption immediately, and that reliance on the exemption may increase over time as funds and dealers better understand the costs and benefits associated with a different business model.

1. Benefits

Some of the benefits that may derive from this exemption include enhanced competition in fund distribution, greater transparency of distribution charges for fund investors, and reduced conflicts for broker-dealers selling funds with different compensation structures.[532] Other benefits include less complicated distribution structures and reduced training required for registered representatives of broker-dealers. This part of the proposal could also prompt new innovative fund distribution systems and allow the development of new business models. We discuss the many other potential benefits of this proposal in detail in Sections III.I and III.M above.

2. Costs

Proposed rule 6c–10(c) is elective, and thus only funds or dealers that choose to rely on it would incur the costs of complying with its conditions. Proposed rule 6c–10(c) requires a fund that chooses to rely on the exemption to meet the following two conditions: (i) The fund must not deduct an ongoing sales charge pursuant to proposed rule 6c–10(b); and (ii) the fund must disclose that it has elected to rely on the exemption in its registration statement. The first condition (prohibiting funds from deducting an ongoing sales charge) should not impose any costs on funds. We expect that any fund that relies on proposed rule 6c–10(c) would do so as part of the creation of a new fund or fund class, and that therefore no funds with ongoing sales charges would incur costs in eliminating these charges.

We estimate that funds may incur some minor costs in complying with the second condition, the requirement to disclose the election to rely on proposed rule 6c–10(c) in their registration statement. The staff estimates that to make the required disclosure on the registration statement it would require one hour of time spent by outside counsel, charged at the rate of $400 per hour. Once the disclosure has been initially made on the registration statement, the staff estimates that there would be no further costs or time to update or revise the election, and therefore there would be no annual costs. Thus, the staff estimates that the cost of complying with the conditions in relying on rule 6c–10(c) would be a one-time initial cost of $400 per fund. The staff estimates that between 10 and 100 new funds might rely on proposed 6c–10(c) for the first time each year, and therefore estimate that the total costs for all funds to comply with the proposed exemption would be between $4000 and $40,000 [533] in one-time costs (to newly formed funds) each year.

We anticipate that funds that rely on proposed rule 6c–10(c) would do so as part of a decision to provide competitive alternatives to other distribution models, and that any other costs not imposed by the conditions of the rule to establish the structure would be justified by the anticipated benefits accruing to the fund. Other such costs to establish the new distribution structure might include setting up new classes of the fund, negotiating new distribution agreements with broker-dealers, and educating investors and financial representatives about the new fee structure.[534] The decision to rely on the proposed rule would be driven by business factors, and the potential for new markets and customers. Funds and broker-dealers that do not choose to rely on this exemption would not bear any costs related to the proposed rule.[535]

We request comment on the discussion of the costs and benefits of our proposed rule 6c–10(c).

- Are there any costs that this exemption would impose on funds or others? What other benefits might it provide? What should we assume about the compensation structure that brokers would design? How many funds are likely to take advantage of this exemption, and what kind of factors would drive this choice? What kind of costs would these funds incur? Are our estimates of the cost of complying with the conditions of the exemptions reasonable?

As discussed previously, our experience with unfixing commission rates leads us to expect that when sales loads are subject to market pressure, sales loads will go down for all investors. However, we acknowledge the potential that some investors (perhaps due to a lack of bargaining power) may pay higher sales loads under proposed rule 6c–10(c) than they might have under the fixed sales load regime of section 22(d). We request comment as to whether investors are likely to pay lower (or higher) sales loads if they purchase fund shares from a fund taking advantage of the proposed exemption.

- Are investors likely to experience any other costs or benefits as a consequence of the proposed exemption? If the exemption is widely relied upon, what might be the effect on distribution arrangements, and on distributors that do not rely on the rule?

[531] This estimate is based on the following calculation: (9 hours × $316 per hour = $2844).

[532] We have not received any applications for an exemption from section 22(d) that are similar to our proposal, so we assume the proposal would not result in cost savings related to reduced preparation and processing of exemptive applications.

[533] This estimate is based on the following calculations: (10 funds × $400 = $4000; 100 funds × $400 = $40,000).

[534] Based on discussions with one fund, that fund suggested that these and similar efforts could include one-time costs of $550,000 and ongoing costs of $250,000 annually per fund family.

[535] Broker-dealers could face certain difficulties related to "investor portability" or account transfers for investors in classes that rely on the proposed rule. Broker-dealers may encounter recordkeeping or other issues when an investor account that holds fund shares in such a class is transferred to a broker-dealer that only sells shares of the fund with asset-based distribution fees. Broker-dealers currently face this issue when transferring investor accounts today (if, for example, the transferred account includes shares of a fund that the new broker-dealer does not sell), although it may be exacerbated by the different fee structure the exemption offers.

I. Director Responsibilities

Board of directors' responsibilities would change under the proposal because we would not require directors to adopt and annually renew a 12b-1 plan or make any special findings.[536] The proposal would not impose other procedural requirements currently in rule 12b–1, including the requirements for quarterly review. Although the proposal would eliminate director specific oversight requirements, directors would still have a fiduciary obligation to consider whether the asset-based distribution fees are in the best interest of the fund and fund shareholders.

1. Benefits

We expect that the proposed reduction in formal requirements regarding the approval of asset-based distribution fees would result in significant cost and time savings for funds and their investors. The staff has estimated in our most recent Paperwork Reduction Act analysis for rule 12b–1 that, for each fund family that has at least one fund with a 12b–1 plan, it takes approximately 425 hours for the fund's directors, counsel, accountants, and other staff to maintain the plan, prepare and evaluate quarterly reports, make the necessary findings, and hold director votes, at an internal time cost of $99,811 per fund family. The staff estimates that there are approximately 379 fund families with at least one fund that charges 12b–1 fees. Therefore, the staff estimates that for all fund families with a 12b–1 plan, funds expend a total of 161,075 hours at an internal time cost of $37,828,369.[537]

The staff estimates that our proposal would reduce this burden by approximately 75% (proportionately for all fund employees) for an annual hour reduction for each fund family of 319 hours, and a $74,858 reduction in internal costs.[538] If our proposal is adopted, we estimate that funds, their employees (or the employees of the adviser), and directors would only need to spend 106 hours instead of 425 hours annually on asset-based distribution fee matters pursuant to rules 12b–2 and 6c–10, at an internal cost of $24,953 instead of $99,811.[539] Therefore, the staff estimates that our proposed amendments to director responsibilities and the proposed removal of rule 12b–1 would reduce this total time from a total of 161,075 hours per year at an internal cost of $37,828,369, to 40,269 hours at an annual cost of $9,457,092[540] resulting in an annual savings of 120,806 hours and $28,371,277 dollars.[541]

- We request comment on these estimates and assumptions.

2. Costs

Other than the time expenditures we have outlined previously in this analysis, we do not expect that there will be any costs associated with our proposed removal of rule 12b–1 and clarification of director responsibilities in our proposal. As discussed above, we anticipate that the proposed changes would simplify the requirements for imposing asset-based distribution fees compared to the current requirements of rule 12b–1. Costs that a fund might incur in connection with revising disclosures regarding asset-based distribution fees are discussed above.[542]

- We request comment on these estimates and assumptions.

J. 11a–3 Amendments

We are also proposing to amend rule 11a–3 (which governs sales loads on offers of exchange within a fund family) to bring it into conformity with the proposed treatment of ongoing sales charges we describe in this Release. The proposed amendments would require funds to give shareholders "credit" against the rate of any sales load owed for ongoing sales charges paid by investors who exchange fund shares within a fund group.[543]

1. Benefits

We anticipate that the proposed amendments to rule 11a-3 would provide a number of benefits. Some of the principal benefits include more equitable treatment of investors who pay sales charges, whether with the initial investment, or over time, and greater transparency in sales charges paid.

2. Costs

Based on conversations with industry representatives, the staff understands that most funds that currently rely on the exemptive relief provided by rule 11a–3 have systems that can credit ongoing sales charges in the way the proposed amendments would require. In order to process credits for CDSLs (and other purposes), funds (or their transfer agents) use a bucketing system that allows them to track the history of fund shares. The staff understands that these existing systems can track the length of time shares subject to an ongoing sales charges have been held, determine the charges that have been paid, and credit those charges against any load imposed on the new shares acquired in an exchange. The staff understands that most funds generally limit exchanges to shares of the same class in other funds within the fund group. As a result, when transferred, the ongoing sales charge and conversion date of both the exchanged and acquired shares would generally be the same, if the maximum sales load remains the same. In those circumstances, no action would be required on the part of the fund or its transfer agent. Alternatively, the conversion date may need to be changed (if, for example, the maximum sales loads of the two funds are different). We expect that most funds should be able to comply with our proposed 11a–3 amendments with little difficulty.

Funds may still need to update their systems for share exchanges and enhance their capacity to include shares with ongoing sales charges. The staff therefore estimates that a typical fund family with funds that deduct ongoing sales charges (or the fund's transfer agent) would incur $25,000 in one-time costs to update its systems to comply with our proposed amendments. For purposes of this analysis, the staff assumes that all 196 fund families that may be affected by our ongoing sales charge proposal would incur this cost, for a total cost of $4,900,000.[544]

- We request comment on these estimates and assumptions.

[536] Our proposed rescission of rule 12b–1 would also eliminate the recordkeeping requirements in rule 12b–1(f) to maintain copies of the plan, reports or any other agreements related to the plan. Although our proposal would not impose recordkeeping requirements, we do not anticipate that funds would realize any cost savings as a result of this amendment, because they would continue to maintain records regarding their asset-based distribution fees to prepare their financial statements.

[537] These estimates are based on the following calculations: (425 hours × 379 fund families = 161,075 hours; $99,811 × 379 fund families = $37,828,369).

[538] This estimate applies to both funds that deduct asset-based distribution fees under proposed rules 12b–2(b) and 6c–10, and to funds that deduct grandfathered 12b–1 fees pursuant to proposed rule 12b–2(d).

[539] These estimates are based on the following calculations: (425 hours × 25% = 106 hours; $99,811 × 25% = $24,953).

[540] These estimates are based on the following calculations: (161,075 hours × 25% = 40,269 hours; $37,828,369 × 25% = $9,457,092).

[541] These estimates are based on the following calculations: (161,075 hours × 75% = 120,806 hours; $37,828,369 × 25% = $28,371,277).

[542] *See supra* Section V.G of this Release.

[543] A more detailed description of these amendments is included in Section III.K of this Release, *supra.*

[544] This estimate is based on the following calculation: (196 fund families × $25,000 = $4,900,000).

K. Other Technical Amendments

Our proposal would make a number of technical amendments to Investment Company Act rules and forms, removing current references to rule 12b–1 and adding references to the appropriate proposed rule.[545] We do not expect these changes to materially affect funds, intermediaries, or others, because they are technical changes that should not affect fund operations. Therefore, we do not believe that there would be any costs associated with these amendments. We request comment on this assumption.

- Would there be any costs associated with making the technical changes described in Section III.L above?

L. Rule 10b–10

The proposed amendments to Exchange Act rule 10b–10 would provide broker-dealer customers with additional information related to mutual fund costs and callable securities.

1. Benefits

The improved disclosure related to mutual fund costs could be expected to help make the confirmation a more complete record of the transaction and help mutual fund investors more fully understand the sales charges they incur. Those improved disclosures could be expected to promote decision making by investors that more appropriately takes those costs into account. Those improved disclosures also could be expected to assist investors in verifying whether they paid the correct sales charge set forth in the prospectus. The improved disclosure related to callable debt securities could be expected to help alert investors to misunderstandings, avoid confusion, promote the timely resolution of problems, and better enable investors to evaluate potential future transactions.

2. Costs

These proposed amendments to rule 10b–10 would require brokers-dealers to include additional information in confirmations that are currently sent to investors. The costs of adding this new information into confirmation disclosures would largely be expected to be one-time programming-related costs, borne primarily by clearing firms and third-party service providers, which are included in the estimates of the Paperwork Reduction Act burden. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that the one-time burden to clearing firms with proprietary systems to reprogram software and otherwise update their systems to enable them to generate confirmations meeting the requirements of the proposed amendments would be approximately 720,000 hours.[546] The staff estimates that this one-time burden would equal total internal costs of approximately $180.7 million dollars,[547] or $1.1 million per vendor.[548] The staff also estimates that vendor licensors of platforms would incur costs equivalent to those incurred by clearing firms with proprietary systems, resulting in one-time burden of 13,500 hours and costs of approximately $3.4 million dollars,[549] or $1.1 million per vendor.[550] In addition, the staff understands that clearing firm licensees would incur an additional 800 burden hours each, or 296,000 total, for a total cost of approximately $74.3 million,[551] or $200,800 per clearing firm licensee.[552]

When we include the costs borne by vendors and clearing firm licensees, we estimate that total one-time burden as a whole would be approximately $258.4 million dollars.[553]

- We request comment on these estimates and assumptions.

M. Total Costs and Benefits

As discussed above, we have designed our proposal to minimize the cost impact on funds, intermediaries, and service providers while maximizing the investor protection and other benefits. The staff anticipates that funds representing approximately 93% of all assets under management will incur minor or no expenses in complying with our proposal.[554]

The staff estimates that the total one-time costs of compliance with our proposed amendments would be $400,994,000 in outside expenses and $362,348,000 in internal time cost equivalents. The staff further estimates the total annual costs of compliance would be $304,076,000. The staff also estimates that the total annual benefits of compliance with our proposed amendments would be between $1,062,361,000 to $1,258,361,000 in cost savings and $31,963,000 in internal time cost equivalents. This does not reflect our full expectation of the costs and benefits of the proposed amendments because many of the expected costs and benefits are qualitative in nature.

- We request comment on these estimates.

N. Request for Comment

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible. In particular, we request comment on the quantitative estimates made within this section and any other costs or benefits that were not discussed here that might result from the amendments. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with 5 U.S.C. 603. It relates to the Commission's proposed removal

[545] These proposed technical amendments would affect rules 17a–8, 17d–3, 18f–3, and Regulation S–X under the Act. For a complete discussion of the changes, *see* Section III.L of this Release, *supra.*

[546] 4,500 burden hours × 160 clearing firms with proprietary systems = 720,000 burden hours. *See* note 437 *supra* and accompanying text.

[547] 720,000 hours × $251 dollars per hour = $180,720,000. These figures are based on an estimated hourly wage rate of $251. The estimated wage figure is based on published compensation for compliance attorneys ($291) and the average costs of a senior computer programmer ($285) and a computer programmer analyst ($190) (($190 + $285) ÷ 2 = $238). *See* Securities Industry and Financial Markets Association, *Management and Professional Earnings in the Securities Industry* (Sept. 2009). The staff estimates that programmers would utilize 75% of the burden hours to implement system changes while attorneys would utilize 25% of the burden hours to review the output, yielding a weighted wage rate of $251 dollars per hour (($291 × .25) + ($238 × .75)) = $251).

[548] 4,500 burden hours × $251 dollars per hour = $1,129,500.

[549] 3 vendors × 4,500 burden hours × $251 dollars per hour = $3,388,500. For purposes of this analysis, the staff assumes that vendors would incur the same per hour costs and burden hours incurred by clearing firms with proprietary systems. *See* note 438 *supra.*

[550] 4500 burden hours per vendor × $251 dollars per hour = $1,129,500.

[551] 370 clearing firm licensees × 800 burden hours × $251 dollars per hour = $74,296,000. For purposes of this analysis, the staff also assumes that vendors or other third-parties would perform the work needed to adapt each of these clearing firms' systems to the changes made to its vendor's platform. The staff further assumes the hourly costs to clearing firms to outsource these additional burdens to third-parties would be equivalent to the hourly costs incurred by vendors and by clearing firms with proprietary systems. This hourly cost is estimated at approximately $251 per hour. *See* note 438 *supra.*

[552] 800 burden hours per clearing firm licensee × $251 per hour = $200,800.

[553] ((3 vendors × 4,500 burden hours) + (370 clearing firm licensees × 800 burden hours) + (160 clearing firms with proprietary systems × 4,500 burden hours)) × $251 per hour = $258,404,500. As discussed above, the staff believes that all parties would incur costs of $251 per hour.

[554] *See supra* Section V.B of this Release.

of rule 12b–1, new rule 12b–2, and amendments to rules 6c–10, 10b–10, 11a–3, 17a–8, 17d–3, and 18f–3, and amendments to Forms N–1A, N–3, N–4, N–6, N–SAR and Regulation S–X and Schedule 14A, under the Securities Act, the Securities Exchange Act, and the Investment Company Act.

A. Reasons for, and Objectives of, the Proposed Actions

As more fully described in Sections I, II, and III of this Release, we are proposing a new rule and rule and form amendments designed to address funds' use of asset-based distribution fees, to amend our current regulations to reflect current economic realities and the role of directors regarding these charges, and to enhance transparency and equity of these fees for investors. Rule 12b–1, the current rule that governs the use of asset-based distribution fees, relies on fund directors to oversee the level and use of these fees. Asset-based distribution fees have evolved into a substitute for front-end loads, and have also enabled the development of new models of fund distribution that could not have been anticipated when the rule was adopted. Small funds, in particular, often rely on asset-based distribution fees as a means of gaining access to distribution channels that would not otherwise be available to them.[555]

The proposal is also designed to improve investor understanding of these fees and their purposes, as well as to enhance equity in the amount of distribution costs all fund shareholders pay, regardless of the method of payment. Currently, investors may not understand that asset-based distribution fees are the equivalent of sales loads, and some investors may believe that they have avoided a sales load entirely by purchasing a share class that charges an asset-based distribution fee. In addition, under current distribution practices, certain long-term shareholders that pay asset-based distribution fees may subsidize the distribution expenses of other shareholders in the fund. As a result, some fund shareholders may pay a disproportionate amount of the fund's distribution expenses.

Our proposed new rule, and rule and form amendments, would significantly revise our current regulations regarding asset-based distribution fees by eliminating the specific requirements for the board of directors. The proposal would recognize that funds bear ongoing expenses that, although they are distribution related, may benefit the fund and fund shareholders, and would replace the specific formal requirements for the board with other regulatory protections. In particular, the proposal would recognize that asset-based distribution fees may be used as a substitute for a sales load, and would regulate them in a similar manner. We expect that this would give directors more time to focus on other important fund matters. In order to provide greater equity among shareholders who bear distribution fees, the proposal would limit the amount of asset-based distribution fees that may be charged to each investor. Funds would be required to convert shares that have an ongoing sales charge to a class that does not impose an ongoing sales charge no later than when the cumulative charges equal the amount of the highest front-end load that the investor would have paid had the investor invested in another class of shares in the same fund, or after a set conversion period based on the rate of the front-end load and the rate of the ongoing sales charge imposed.

In addition, the proposal would allow funds that deduct a marketing and service fee pursuant to rule 12b–2 to sell their shares at other than the public offering price as disclosed in their prospectus. This would enable funds to offer new choices to investors in paying for the costs of distribution; enhance competition in pricing between broker-dealers in the sale of fund shares; and present new business opportunities to funds that choose to use this exemption. We believe small funds may be the funds that are more likely to so experiment and use this exemption to expand their market opportunities.

Finally, the proposal would also make a number of changes to current disclosure requirements designed to enhance investor understanding of these fees. In particular, the proposal would require the prospectus fee table to state separately (i) the amount of asset-based distribution fees that pays for services received by shareholders in the fund and for other general distribution purposes (the marketing and service fee), and (ii) the amount of asset-based distribution fees that are a substitute for a sales load (the ongoing sales charge). This disclosure is designed to allow fund shareholders to understand better the purpose of these fees, and the amounts they are paying. The proposal would also make a number of conforming changes to other rules and forms that are intended to update current references to rule 12b–1 to reflect the regulations we are proposing today, as well as eliminating or updating requirements that would become irrelevant if our proposal were adopted. The proposal further would make changes to rule 10b–10 to improve disclosure on broker-dealer confirmations of costs related to mutual funds and to make other improvements.

B. Legal Basis

The Commission is proposing amendments to Schedule 14A under the authority set forth in sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Exchange Act [15 U.S.C. 78c(b), 78j, 78m, 78n, 78*o,* 78w(a), and 78mm], and sections 20(a), 30(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–20(a), 80a–29(a), and 80a–37(a)]. The Commission is proposing amendments to rule 6–07 of Regulation S–X under the authority set forth in section 7 of the Securities Act [15 U.S.C. 77g] and sections 8 and 38(a) of the Investment Company Act [15 U.S.C. 80a–8, 80a–37(a)].

The Commission is proposing to remove rule 12b–1 under the authority set forth in sections 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–12(b) and 80a–37(a)]. The Commission is proposing new rule 12b–2 under the authority set forth in sections 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–12(b) and 80a–37(a)]. The Commission is proposing amendments to rule 6c–10 under the authority set forth in sections 6(c), 12(b), 22(d)(iii), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–12(b), 80a–22(d)(iii) and 80a–37(a)]. The Commission is proposing amendments to rules 11a–3, 17a–8, 17d–3, and 18f–3 under the authority set forth in sections 6(c), 11(a), 17(d), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–11(a), 80a–17(d), 80a–18(i) and 80a–37(a)].

The Commission is proposing amendments to Form N–SAR under the authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Securities Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and sections 8, 13(c), 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–13(c), 80a–24(a), 80a–29, and 80a–37]. The Commission is proposing amendments to registration Forms N–1A, N–3, N–4, and N–6, under the authority set forth in sections 6, 7(a), 10, and 19(a) of the Securities Act [15 U.S.C. 77f, 77g(a), 77j, 77s(a)], and sections 8(b), 24(a), and 30 of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–24(a), and 80a–29]. The Commission is proposing amendments to Exchange Act rule 10b–10 pursuant to the authority conferred by the Exchange Act, including sections 10, 17,

[555] *See, e.g.,* Roundtable Transcript, *supra* note 109, at 67–68 (statement of Mellody Hobson, Ariel Capital Management, LLC), and discussion of the impact of the proposal on small funds, Section III.M, *supra.*

23(a), and 36(a)(1) [15 U.S.C. 78j, 78q, 78w(a), and 78mm(a)(1)].

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. Based on a review of filings submitted to the Commission, approximately 108 investment companies registered on Form N–1A meet this definition. These funds have approximately 189 classes. Commission staff estimates that 40 of these investment companies have at least one class that charges 12b–1 fees, with approximately 78 classes that deduct 12b–1 fees. Of those 78 classes, 23 charge 12b–1 fees in excess of 25 basis points, while the remaining 55 classes charge 12b–1 fees of less than 25 basis points.

For purposes of the Regulatory Flexibility Act, a broker-dealer is a small business if it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to rule 17a–5(d) of the Exchange Act or, if not required to file such statements, a broker-dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter) and if it is not an affiliate of an entity that is not a small business.[556] The Commission staff estimates that approximately 862 broker-dealers meet this definition.[557] Of these, however, only 17 clearing firms can be classified as small entities that would likely incur the costs of adopting the proposed amendments to rule 10b–10.[558]

D. Reporting, Recordkeeping, and Other Compliance Requirements

Our proposal would amend the reporting, recordkeeping, and other compliance requirements for all funds (including small entities) that comply with rule 12b–1, or would comply with proposed rule 12b–2, proposed amendments to rules 6c–10, 11a–3, 17a–8, 17d–3, and 18f–3, or that would respond to amended Forms N–1A, N–3, N–4, N–6, N–SAR, Schedule 14A and Regulation S–X.[559] We have estimated the costs of these amendments for all marketplace participants previously in the cost-benefit analysis in Section V. above. No new classes of skills would be required to comply with our proposed new rule, or rule and form amendments.

1. Rule 6c–10

The proposed amendments to rule 6c–10(b) would allow a fund to deduct asset-based distribution fees from fund assets in excess of asset-based fees permitted under proposed rule 12b–2 (an "ongoing sales charge"), provided shares sold subject to such an ongoing sales charge convert to another class of shares without an ongoing sales charge when the shareholder has paid cumulative charges or rates of fees that are equivalent to what he or she would have paid for shares subject to a front-end sales load. Rule 6c–10(c) would allow funds to sell shares at a price other than described in the prospectus. This provision is an exemption, and thus would not create any new recordkeeping, reporting, or compliance requirements for small entities unless they chose to rely on the exemption.

The proposed amendments would not impose any new reporting obligations on small entities. However, small entities that charge an ongoing sales charge would be required to keep certain new records regarding the length of time that a shareholder holds shares and would be required to comply with the new requirement for conversion of those shares. Commission staff has estimated the costs of these requirements for all funds (including small entities) in the cost-benefit analysis in Section V above. We do not anticipate that small funds would face unique or special burdens when complying with the proposed amendments to rule 6c–10.

2. Removal of Rule 12b–1

We are proposing to remove rule 12b–1. As discussed above, Commission staff has estimated that the proposed removal would reduce costs significantly for affected funds, including the 40 small funds that the Commission staff estimates have at least one class that currently charges 12b–1 fees. The proposal would eliminate existing recordkeeping, reporting, and compliance requirements, and would not create any new ones.

3. Rule 12b–2

The proposal would include new rule 12b–2, which would permit funds to deduct a "marketing and service fee" from fund assets, limited to the amount established in the NASD sales charge rule for "service fees." Any assets a fund deducts in excess of the marketing and service fee would be regulated under rule 6c–10 as an ongoing sales charge. The proposal would also permit funds to continue to charge 12b–1 fees on shares sold prior to the compliance date of the rule and rule amendments, if they are adopted, and would continue to regulate the use of fund assets to pay for brokerage as under rule 12b–1(h) (by including a similar provision in proposed rule 12b–2). We have previously estimated that almost all funds (including small funds) that currently charge 25 basis points or less in asset-based distribution fees under rule 12b–1 would incur no additional reporting, recordkeeping, or compliance requirements under proposed rule 12b–2.

4. Rule 11a–3

As previously discussed, our proposal would amend rule 11a–3 to ensure that funds give credit for ongoing sales charges when an investor exchanges fund shares within a fund family. The proposed amendments would expand current recordkeeping responsibilities for funds that charge an ongoing sales charge, including small funds. Commission staff has estimated the costs of these changes for all funds in the cost-benefit analysis in Section V above. The staff estimates that 40 funds qualify as small entities for purposes of the Regulatory Flexibility Act, and that they would incur the same costs of compliance ($25,000, as estimated in section V.K above) to comply with the proposed amendments to rule 11a–3 as larger funds, because these funds use similar computer systems and/or transfer agents to track share exchanges. Although the volume of rule 11a–3 share exchanges may be less for small funds, with comparably lower costs of expanding the systems to handle exchanges as compared to larger funds, the staff estimates that any expenses incurred in upgrading these systems to meet the compliance requirements of our proposal would be comparable, due to a lack of bargaining power and economies of scale for the smaller funds. Therefore, the Commission staff estimates that each small fund family

[556] 17 CFR 240.0–10.

[557] This estimate is based on information provided in FOCUS Reports filed with the Commission in 2009.

[558] As discussed above, although there are approximately 5035 broker-dealers registered with the Commission to whom the rule would apply, the staff believes that the costs of implementing the proposed changes to rule 10b–10 would be primarily borne by clearing firms. Also as discussed above, the staff estimates that there are approximately 530 clearing firms. Based on FOCUS Reports filed with the Commission in 2009, the staff believes that of these 530 clearing firms, approximately 17 come within the definition of a small entity.

[559] For a complete discussion of the specifics of the new rule and rule and form amendments, *see* Section III, *supra.*

that charges 12b–1 fees high enough to qualify as ongoing sales charges, would incur $25,000 in expenses related to the proposed amendments to the reporting, recordkeeping, and compliance requirements of rule 11a–3.

5. Rules 17a–8, 17d–3, and 18f–3

Our proposal would make technical conforming changes to these rules as discussed in Section III.L above. Commission staff estimates that the proposed changes would create no change in the reporting, recordkeeping, or compliance requirements for funds (including small funds).

6. Form N–1A

Form N–1A is the form that open-end mutual funds use to register with the Commission. The proposed amendments would require funds that file Form N–1A to: (i) Eliminate the line item currently titled "Distribution and/or service (12b–1) fee" and include two line items, (if relevant) titled "Marketing and Service Fee" and "Ongoing Sales Charge"; (ii) revise and streamline prospectus narrative disclosure on asset-based distribution fees; and (iii) revise and streamline SAI disclosure regarding asset-based distribution fees. The staff estimates that the proposed changes would reduce costs for all funds, including small entities, by reducing the amount of time and costs funds incur in preparing the forms, and would not impose new reporting or recordkeeping requirements.

7. Form N–3, Form N–4, and Form N–6

The proposed amendments to Forms N–3, N–4, and N–6 would conform disclosures in these forms to our proposals.[560] The proposed amendments would replace references to rule 12b–1 with references to proposed rules 6c–10(b) or 12b–2(b) and (d). Form N–3 is the registration form used by insurance company separate accounts registered as management investment companies that offer variable annuity contracts. The proposed amendments to Form N–3 would: (i) Revise and streamline prospectus narrative disclosure on asset-based distribution fees; and (ii) revise and streamline Statement of Additional Information disclosure regarding asset-based distribution fees. The proposed changes would not impose new reporting or recordkeeping requirements for Form N–3.

The proposed changes to Forms N–4 and N–6 are technical and designed to update references to 12b–1 plans to the new terminology used in our proposal. These proposed changes would not change the reporting or recordkeeping requirements of these forms. In the cost-benefit analysis above, we explained that we do not anticipate that these amendments would result in new costs or burdens associated with preparing the forms. We do not believe that these amendments will impose any new recordkeeping, reporting, or compliance requirements.

8. Form N–SAR

Our proposal would amend the instructions to Form N–SAR, which currently requires funds to respond to a series of questions regarding their 12b–1 plans. Form N–SAR is the form that registered investment companies use to make periodic reports to the Commission. Our proposed amendments would add an instruction to Form N–SAR to disregard, for funds that no longer have 12b–1 plans, four questions (Items 41–44) that relate to the operation of rule 12b–1 plans (because they would be irrelevant in light of our proposed new framework for asset-based distribution fees). However, funds that maintain grandfathered fund classes would continue to respond to these items. The proposal would impose no new recordkeeping, reporting, or compliance requirements, and would instead reduce these burdens for respondents that do not have grandfathered 12b–1 plans.

9. Schedule 14A

Funds comply with the requirements of Schedule 14A when they solicit proxies from their shareholders. Our proposal would amend the required disclosures under section 14A when a fund institutes or materially increases a marketing and service fee after shares have been offered to the public. The proposed amendments would streamline proxy disclosures, removing items that would be superfluous if our proposed new rules and rule amendments on marketing and service fees were adopted. As discussed above, we have previously estimated that our changes to Schedule 14A would not create any new reporting, recordkeeping, or compliance burdens for funds that solicit proxies, and would instead reduce the existing burden.

10. Regulation S–X

Regulation S–X requires funds to file a statement of operations listing their income and expenses, and to state separately all amounts paid in accordance with a plan adopted under rule 12b–1. Our proposal would conform this requirement to the terms of our proposed new rules and rule amendments regarding asset-based distribution fees. The proposed amendments to regulation S–X would require that funds state asset-based distribution fees paid, and state separately amounts paid pursuant to our proposed rules on marketing and service fees and ongoing sales charges. Our understanding is that funds, as a matter of good business practice, already keep the information on asset-based distribution fees in the proper form, because that information is used to prepare information on 12b–1 fees, and is a component of the overall statement of expenses. The staff estimates that our proposed changes to regulation S–X would not change the amount of time or the costs required for funds (including small funds) to prepare their statements of operations. Therefore, we do not expect that these amendments will impose any new recordkeeping, reporting, or compliance requirements.

11. Rule 10b–10

Exchange Act rule 10b–10 requires broker-dealers to provide transaction confirmations to customers. The proposed amendments to this rule would require disclosure of additional information related to sales charges in connection with transactions involving mutual funds, and certain additional information in connection with callable debt securities. The proposed amendments would expand current recordkeeping responsibilities for broker-dealers, including small broker-dealers. As discussed above, the Commission staff estimates that the one-time burden for clearing firms with proprietary systems associated with these proposed amendments would equal total internal costs of approximately $180.7 million dollars[561] or approximately $1.1 million per clearing firm with a proprietary system.[562] Also as discussed above, as a general matter, medium-sized and smaller clearing firms, and also some larger ones, use platforms licensed from vendors to generate the data necessary to send confirmations. As discussed

[560] Form N–3 is used by separate accounts offering variable annuity contracts and registered as management investment companies. Form N–4 is used by separate accounts offering variable annuity contracts and registered as unit investment trusts. Form N–6 is used by separate accounts offering variable life insurance contracts and registered as unit investment trusts.

[561] (4,500 burden hours × 160 clearing firms with proprietary systems) × $251 dollars per hour = $180,720,000.

[562] 4,500 hours × $251 dollars per hour = $1,129,500. *See* note 548 *supra.*

above, the staff understands that there are three primary vendors that license the majority of platforms to clearing firms that do not have proprietary systems. In addition, clearing firms may also use vendors to send physical confirmations to investors. Therefore, these vendors would have to reprogram their software and update these platforms to generate the data that would allow their clients to comply with these proposed amendments to rule 10b–10. Based on discussions with industry representatives, the staff is of the view that the cost and burdens to vendors to update the platforms that they license to clearing firms would be equivalent to the costs and burdens that would be incurred by clearing firms who would have to reprogram and update their proprietary systems, resulting in a cost to these vendors of approximately $3.4 million dollars [563] or $1.1 million per vendor.[564] In addition, the staff understands that clearing firm licensees of these platforms would still incur a one-time cost of approximately $74.3 million dollars [565] or $200,800 [566] per clearing firm licensee, to adopt the changes made to vendor platforms and to determine whether the output satisfies the requirements of the proposed amendments.

As discussed above, of the approximately 530 clearing firms that would incur upgrade costs, 17 of those are small entities. The staff believes that these small entity clearing firms would likely license their platforms from vendors. Accordingly, the staff estimates that these firms would incur costs of approximately $200,800 each to adapt to the changes in vendor platforms, or approximately $3.4 million total.[567] These figures are already included in the total burden costs that clearing firms, and in particular, clearing firm licensees, would incur to implement the proposed amendments to rule 10b–10.

In addition, as discussed above,[568] the staff believes that clearing firms will bear most of the costs associated with updating back-office operations to accommodate the proposed changes to rule 10b–10. Accordingly, the staff does not believe that small introducing firms will incur these costs.

12. Request for Comment

- The Commission solicits comment on these estimates and the anticipated effect the proposed amendments would have on small entities subject to the proposed rule and rule and form amendments.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We have not identified any federal rules that duplicate, overlap, or conflict with the proposed rule or rule or form amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

Investors in small funds face the same issues as investors in larger funds when paying asset-based distribution fees. Small funds use asset-based distribution fees as a means of growing their funds and accessing alternate distribution channels, and our rule proposal is designed to allow funds to continue to use asset-based distribution fees for these purposes. We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. We have tried to design our proposal so that small entities would not be disadvantaged, and we anticipate that the potential impact of the proposed rule and amendments on small entities would not be significant. Small entities should experience the same benefits from the proposal as other funds. We have endeavored to clarify, consolidate, and simplify disclosure for all funds, which should be beneficial for all funds, including those that are small entities. Moreover, with respect to the proposed revisions to the broker-dealer confirmation requirements of rule 10b–10, we also believe that special compliance or reporting requirements for small broker-dealers would not be appropriate or consistent with investor protection, because distinguishing such requirements based on the size of the broker-dealer may be accompanied by disparate treatment of investors and could lead to investor confusion.

For these reasons, we have not proposed alternatives to the proposed rule and rule and form amendments.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of the IRFA.

- We particularly request comments on the number of, and the likely impact on, small entities that would be subject to the proposed rule, and rule and form amendments. Commenters are asked to describe the nature of any impact and provide empirical data supporting its extent. These comments will be considered in connection with any adoption of the proposed rule and amendments, and reflected in a Final Regulatory Flexibility Analysis.

Comments should be submitted in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–15–10, and this file number should be included on the subject line if e-mail is used.[569] Comment letters will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520, on official business days between the hours of 10 a.m. and 3 p.m. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[570] Section 2(b) of the Securities Act and

[563] (3 vendors × 4500 burden hours) × $251 dollars per hour = $3,388,500. *See* note 549 *supra.*

[564] 4500 hours × $251 dollars per hour = $1,129,500. *See* note 550 *supra.*

[565] (800 burden hours × 370 clearing firms that use vendor licensed platforms) × $251 per hour = $74,296,000. *See* note 551 *supra.*

[566] 800 hours × $251 dollars per hour = $200,800. *See* note 552 *supra.*

[567] (800 burden hours × 17 small entity clearing firms) × $251 per hour = $3,413,600.

[568] *See* Section IV.H *supra.*

[569] Comments on the IRFA will be placed in the same public file that contains comments on the proposed rule and amendments.

[570] 15 U.S.C. 78w(a)(2).

section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[571] Further, section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[572] As discussed below, we expect that the proposed rule, and rule and form amendments, may promote efficiency, competition, and capital formation.

A. Removal of Rule 12b–1

Our proposal would remove rule 12b–1, and in so doing, would eliminate the explicit requirements in the rule for board approval and annual review of asset-based distribution fees and written 12b–1 plans. By eliminating these formal requirements in rule 12b–1, our proposal is designed to modify the regulations governing these fees to reflect current economic realities. As discussed in Section V above, funds may realize significant time and expense savings when managing asset-based distribution fees under our proposal, compared to the current requirements of rule 12b–1. Thus, we expect that the proposed removal of rule 12b–1 would enhance the efficiency of funds in managing and overseeing the operation and use of asset-based distribution fees.

Many funds use asset-based distribution fees to pay for distribution costs in a cost-effective manner that allows them to compete with other investment products. We expect that, in combination with the rest of our proposal, our proposed removal of rule 12b–1, if adopted, would not prevent funds from continuing to access the competitive benefits of paying for distribution through asset-based fees. Small funds often use asset-based distribution fees as a means of building their funds and participating in distribution channels that they might not otherwise be able to access. We have designed our proposals to allow funds to continue to grow through these means. In addition, our proposal would allow funds that currently charge 12b–1 fees to continue to deduct these fees on outstanding shares without significant disruption. Therefore, we do not anticipate that our proposal to remove rule 12b–1 would affect capital formation or competition.

B. Rule 12b–2

We are proposing to adopt rule 12b–2 (in combination with the rest of our proposal) to replace rule 12b–1. Proposed rule 12b–2 would allow funds to deduct a "marketing and service fee" from fund assets, up to the amount permitted for service fees under NASD Conduct Rule 2830. The proposed amendments would consider any asset-based distribution fee that exceeds this amount to be an "ongoing sales charge" that would be separately regulated under our proposed amendments to rule 6c–10, as discussed below. Proposed rule 12b–2 would not require a "plan" or impose other special board requirements to deduct a marketing and service fee. As discussed above, we expect that the marketing and service fee under proposed rule 12b–2 would allow funds to continue to experience the competitive and capital formation benefits resulting from a 25 basis point asset-based distribution fee. The limited conditions associated with the proposed rule should allow funds to impose these fees in a more efficient way. Because all funds would be able to rely on the proposed rule, and because we do not expect that the rule would affect the ability of funds to create distribution structures that fit their competitive model, we do not believe that the proposed rulemaking would impact competition significantly. We also do not anticipate that the proposed rule would significantly encourage or discourage assets being invested in the capital markets, or in particular funds, and thus do not expect that there would be a significant impact on capital formation.

C. Amended Rule 6c–10

Proposed rule 6c–10(b) would treat asset-based distribution fees deducted in excess of the marketing and service fee as "ongoing sales charges." The proposal would require that funds convert shares subject to an ongoing sales charge to a share class without the fee after the investor has paid cumulative amounts or rates of ongoing sales charges that equal the fund's front-end load.

We expect that the ongoing sales charge may allow investors to better understand the costs of distribution they pay, and would reduce the potential for some long-time investors to subsidize the distribution costs of other investors in the same fund. Our proposal therefore may allow investors who are better informed to allocate their investments more efficiently. The proposed amendments should also reduce fund intermediary conflicts of interest when advising investors regarding fund classes that provide different levels of intermediary compensation based on the period or method for payment of distribution fees. This might allow fund intermediaries to spend less time managing these conflicts and instead allocate their resources more efficiently towards providing better services to investors and increasing competition among intermediaries. Because all funds would be able to rely on the proposed rule, and because we do not expect that the rule would affect the ability of funds to create distribution structures that fit their competitive model, we do not believe that the proposed rulemaking would impact competition significantly. We also do not anticipate that the proposed rule would significantly encourage or discourage assets being invested in the capital markets, or in particular funds, and thus do not expect that there would be a significant impact on capital formation.

In addition, the proposed amendments to rule 6c–10(c) would permit funds to sell their shares at a price other than a current public offering price as described in the prospectus, which is otherwise required by section 22(d). Section 22(d) imposes a significant restriction on competition and the efficient setting of sales loads for mutual fund distribution, because it effectively requires dealers to sell fund shares at the same sales load, regardless of the services provided or the actual cost of distribution. Currently, all investors in a particular fund class pay the same costs for distribution when purchasing shares through a fund intermediary, regardless of the quality or type of services provided by the intermediary. Our proposal would allow funds to make available a class of shares that "unbundles" the costs of distribution from the fund's operating expenses. This is designed to give funds and intermediaries new avenues for competition, by permitting funds and intermediaries to break out the costs of distribution from other services they provide, and letting investors choose different levels of service based on their needs, considering among other things, cost and quality of the services offered.

Under our proposal, investors would be able to seek out intermediaries that provide a high level of service, provide simple execution of fund trades, or provide services that fall somewhere in the middle. Sales charges would be

[571] 15 U.S.C. 77b(b); 15 U.S.C. 78c(f).

[572] 15 U.S.C. 80a–2(c).

transparent and could be imposed or deducted in a manner and at any time selected by the investor. We expect that this would enhance efficiency of capital allocation as well as competition among fund intermediaries by allowing investors to shop for the pricing structure that best suits the investor's needs and the marketing choices of the fund or intermediary.[573]

Funds that take advantage of the exemption would be able to effectively externalize the distribution of their shares, an approach that may encourage small funds and new entrants to the market that are eager to attract dealers that wish to sell shares based on their own fee schedules. It may also permit these funds to compete better by reducing their expense ratios (because it would eliminate, at least with respect to the particular class, ongoing sales charges), while still charging low or no front-end sales loads. In addition, innovative distribution models may encourage additional investors to invest in the capital markets, enhancing capital formation.

An externalized approach could simplify the operations of intermediaries, allowing them to process transactions more efficiently based on a single, uniform fee structure. In some cases, it could also simplify fund operations and fund prospectuses by eliminating the need to offer multiple classes of shares, further reducing fund expenses, enhancing the efficiency of distribution, and reducing investor confusion. This type of structure may also help traditional mutual funds better compete with other investments, such as exchange-traded funds (ETFs), which have externalized distribution costs and have been growing in popularity.[574]

The proposed exemption is designed to foster price competition among fund intermediaries that charge for the sale of mutual funds, and enhance the efficiency of fund operations and investor choice. Therefore, as discussed above, we expect that the proposed rule amendments are likely to enhance efficiency, competition, and capital formation in the fund marketplace.

D. Disclosure Amendments

Our proposal would amend Forms N–1A, N–SAR, N–3, N–4, and N–6 and Regulation S–X, to conform them to our proposed treatment of asset-based distribution fees.[575] The proposed amendments would improve disclosure by separately identifying the "marketing and service fee" and "ongoing sales charge" as individual line items in the fee table and income statement. The proposed amendments would also streamline current disclosure regarding asset-based distribution fees by replacing disclosure made irrelevant by our proposal with more narrowly focused and precise information regarding asset-based distribution fees. The proposed disclosure amendments would also replace references to 12b–1 fees in these forms with references to the appropriate rule in our proposal.

These proposed changes may allow investors to more efficiently obtain and manage information about their investments, as well as reduce the time and cost burdens funds bear in preparing this information. These proposed amendments may lead to increased efficiency by enhancing the ability of investors to more specifically identify the costs of distribution they pay when investing in funds. This information should promote more efficient allocation of investments by investors among funds because they may compare and choose funds based on their costs of distribution and the services provided for these fees more easily. To the extent that these create efficiencies, this may result in new investors investing in funds (or existing investors adding additional capital), and could enhance capital formation, and the efficiency of investors selecting among funds. Because these disclosure amendments would apply to all funds, we do not expect that they would have an impact on competition in the fund marketplace.

E. Rule 11a–3 and Technical Amendments

Our proposal would also make amendments to rule 11a–3 (which governs the payment of sales loads when making share exchanges within a fund family) to conform to our proposed treatment of asset-based distribution fees as sales loads. The proposed amendments would require funds to credit ongoing sales charges an investor has paid against any other load owed when the investor exchanges shares within a fund family. We do not anticipate that these amendments would affect capital formation or competition, nor would they reduce the efficiency of these exchanges because they apply to all funds and should not encourage or discourage investors to invest in the capital markets. We expect that the proposed amendments may reassure investors that they would not pay excessive distribution costs when making exchanges within a fund family, regardless of whether they chose to pay the costs of distribution front-end, over time, or upon redemption.

Our proposal would also make technical conforming amendments to rules 17a–8, 17d–3, and 18f–3, to replace references to rule 12b–1 with references to the appropriate rule regulating asset-based distribution fees in our proposal. We do not expect that these changes would affect the operation of funds, or the behavior of investors, fund intermediaries, or service providers. Therefore, we do not anticipate that these proposed amendments would impact competition, efficiency, or capital formation.

F. Rule 10b–10 Amendments

Our proposal further would amend rule 10b–10 to provide broker-dealer customers with improved information in transaction confirmations about mutual fund sales charges and about information regarding callable securities. These proposed amendments may lead to increased efficiency and competitiveness by enhancing the ability of investors to more specifically understand information related to their transactions in these securities, which not only would allow them to correct any associated errors, but also would help inform their future purchases of securities of this type and promote investment into securities that bear lower distribution-related costs.

G. Request for Comment

- We request comment on whether the proposed rule and rule and form amendments, if adopted, would promote efficiency, competition, and capital formation. We also request comment on any anti-competitive effects of the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views, if possible.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;

[573] Some roundtable commenters agreed that the externalization of asset-based distribution fees could improve competition among mutual funds. *See* Comment Letter of Bridgeway Funds, Inc. and Bridgeway Capital Management, Inc. (July 19, 2007) ("Mutualization of [12b–1] fees * * * distorts fundamental, free-market economics and restricts valuable competition in the intermediary channel.").

[574] In 2009, ETF assets grew 46 percent (from $531 billion to $777 billion) while traditional equity and bond mutual fund assets grew 16 percent (from $9.6 trillion to $11.1 trillion). *See* 2010 ICI Fact Book, *supra* note 6, at 9 and 41.

[575] *See supra* Section III.

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment, or innovation.

If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

• We request comment on the potential impact of the proposed rules and rule amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Statutory Authority

The Commission is proposing amendments to rule 6–07 of Regulation S–X under the authority set forth in section 7 of the Securities Act [15 U.S.C. 77g] and sections 8 and 38(a) of the Investment Company Act [15 U.S.C. 80a–8 and 80a–37(a)]. The Commission is proposing amendments to Schedule 14A under the authority set forth in sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act [15 U.S.C. 78c(b), 78j, 78m, 78n, 78o, 78w(a), and 78mm], and sections 20(a), 30(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–20(a), 80a–29(a), and 80a–37(a)].

The Commission is proposing to rescind rule 12b–1 under the authority set forth in sections 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–12(b) and 80a–37(a)]. The Commission is proposing new rule 12b–2 under the authority set forth in sections 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–12(b) and 80a–37(a)]. The Commission is proposing amendments to rule 6c–10 under the authority set forth in sections 6(c), 12(b), 22(d)(iii), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–12(b), 80a–22(d)(iii), and 80a–37(a)]. The Commission is proposing amendments to rules 11a–3, 17a–8, 17d–3, and 18f–3 under the authority set forth in sections 6(c), 11(a), 17(d), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–11(a), 80a–17(d), 80a–18(i), and 80a–37(a)]. The Commission is proposing amendments to Exchange Act rule 10b–10 pursuant to the authority conferred by the Exchange Act, including Sections 10, 17, 23(a), and 36(a)(1) [15 U.S.C. 78j, 78q, 78w(a), and 78mm(a)(1)].

The Commission is proposing amendments to registration Forms N–1A, N–3, N–4, and N–6 under the authority set forth in sections 6, 7(a), 10, and 19(a) of the Securities Act [15 U.S.C. 77f, 77g(a), 77j, and 77s(a)], and sections 8(b), 24(a), and 30 of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–24(a), and 80a–29]. The Commission is proposing amendments to Form N–SAR pursuant to authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Securities Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and sections 8, 13(c), 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–13(c), 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Part 210

Accounting, Reporting, and recordkeeping requirements, Securities.

17 CFR Parts 239, 240, and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Form Amendments

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78(c), 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

2. The Part 210 heading is revised as set forth above.

3. Section 210.6–07 is amended by revising paragraph 2(f) to read as follows:

§ 210.6–07 Statements of operations.

* * * * *

2. *Expenses.* * * *

(f) State separately all fees deducted from fund assets to finance distribution activities pursuant to §§ 270.12b–2(b), (d) or 270.6c–10(b) of this chapter. Reimbursement to the fund of expenses deducted from fund assets pursuant to §§ 270.12b–2(b), (d) and 270.6c–10(b) shall be shown as a negative amount and deducted from current §§ 270.12b–2(b), (d) and 270.6c–10(b) expenses. If §§ 270.12b–2(b) and 270.6c–10(b) expense reimbursements exceed current §§ 270.12b–2(b) and 270.6c–10(b) expenses, such excess shall be used in the calculation of total expenses under this caption.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

6. Section 240.10b–10 is amended by:

a. Revising paragraph (a)(6)(i);

b. Removing from paragraph (a)(9)(ii) the period at the end of the paragraph and adding in its place "; and"

c. Adding paragraphs (a)(10) and (a)(11);

d. Revising paragraph (b)(2);

e. Adding paragraph (d)(10);

f. Removing from paragraph (e) introductory text ", *Provided* that:" at the end and adding in its place "; *provided* that the broker or dealer that effects any transaction for a customer in security futures products in a futures account gives or sends to the customer no later than the next business day after execution of any futures securities product transaction, written notification disclosing:"

g. Removing paragraph (e)(1) introductory text and redesignating paragraphs (e)(1)(i), (ii), (iii) and (iv) as paragraphs (e)(1), (2), (3), and (4), respectively; and

h. Removing paragraph (e)(2).

The revisions and additions read as follows.

§ 240.10b–10 Confirmation of transactions.

* * * * *

(a) * * *

(6) * * *

(i) The yield at which the transaction was effected, including the percentage

amount and its characterization (*e.g.,* current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and, if different, the first date upon which the security may be called, and call price; and

* * * * *

(10) In the case of a purchase of a mutual fund security:

(i) The amount of any sales charge that the customer incurred at the time of purchase, expressed in dollars and as a percentage of the public offering price, the net dollar amount invested in the security, and the amount of any applicable breakpoint or similar threshold used to calculate the sales charge;

(ii) The maximum amount of any deferred sales charge that the customer may incur in connection with the subsequent redemption or sale of the securities purchased, expressed as a percentage of the net asset value at the time of purchase or at the time of redemption or sale, as applicable;

(iii) If the customer will incur any ongoing sales charge (as defined in § 270.6c–10) or any marketing and service fee (as defined in § 270.12b–2) after the time of purchase:

(A) The annual amount of the charge or fee, expressed as a percentage of net asset value; the aggregate amount of the ongoing sales charge that may be incurred over time, expressed as a percentage of net asset value; and the maximum number of months or years that the customer will incur ongoing sales charge; and

(B) The following statement (which may be revised to reflect the particular charge or fee at issue): "In addition to ongoing sales charges and marketing and service fees, you will also incur additional fees and expenses in connection with owning this mutual fund, as set forth in the fee table in the mutual fund prospectus; these typically will include management fees and other expenses. Such fees and expenses are generally paid from the assets of the mutual fund in which you are investing. Therefore, these costs are indirectly paid by you."; and

(11) In the case of a redemption or sale of a mutual fund security, the amount of any deferred sales charge that the customer has paid in connection with the redemption or sale, expressed in dollars and as a percentage of the net asset value at the time of purchase or at the time of redemption or sale, as applicable.

(b) * * *

(2) Such broker or dealer gives or sends to such customer within five business days after the end of each quarterly period, for transactions involving investment company and periodic plans, and after the end of each monthly period, for other transactions described in paragraph (b)(1) of this section, a written statement disclosing each purchase or redemption, effected for or with, and each dividend or distribution credited to or reinvested for, the account of such customer during the month; the date of such transaction; the identity, number, and price of any securities purchased or redeemed by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; any ongoing sales charges or marketing and service fees incurred in connection with the purchase or redemption of a mutual fund security; and that any other information required by paragraph (a) of this section will be furnished upon written request: *Provided, however,* that the written statement may be delivered to some other person designated by the customer for distribution to the customer; and

* * * * *

(d) * * *

(10) *Mutual fund security* means any security issued by an open-end company, as defined by section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(1)), that is registered or required to register under section 8 of that Act, including any series of such company.

* * * * *

7. Schedule 14A (referenced in § 240.14a–101) is amended by revising paragraphs (a)(1)(iii) and (d) in Item 22 to read as follows:

§ 240.14a–101 Schedule 14A Information required in a proxy statement.

* * * * *

Item 22. Information Required in Investment Company Proxy Statement

(a) * * *

(1) * * *

(iii) *Marketing and Service Fee.* The term "Marketing and Service Fee" shall mean a fee deducted from Fund assets to finance distribution activities pursuant to rule 12b–2(b) (§ 270.12b–2(b)).

* * * * *

(d) *Marketing and Service Fees.* If action is to be taken to institute a Marketing and Service Fee or increase the rate of an existing Marketing and Service Fee, include the following information in the proxy statement:

(1) A description of the nature of the action to be taken and the reasons therefore, the rate of the Marketing and Service Fee as it is proposed to be deducted and the purposes for which such fee may be used, and, if the action to be taken is an increase in the rate of an existing Marketing and Service Fee, the reasons for the increase.

(2) If the Fund currently deducts a Marketing and Service Fee:

(i) Provide the date that the Marketing and Service Fee was first instituted and the date of the last increase, if any;

(ii) Disclose the rate of the Marketing and Service Fee and the purposes for which such fee may be used; and

(iii) Disclose the name of, and the amount of any Marketing and Service Fee paid by the Fund during its most recent fiscal year to, any person who is an affiliated person of the Fund, its investment adviser, principal underwriter, or Administrator, an affiliated person of such person, or a person that during the most recent fiscal year received 10% or more of the aggregate amount of Marketing and Service Fees paid by the Fund.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

9. The general authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

10. The authority citation for § 270.6c–10 is revised to read as follows:

Authority: * * *

Section 270.6c–10 is also issued under 15 U.S.C. 80a–6(c), 15 U.S.C. 80a–12(b), 15 U.S.C. 80a–22(d) and 80a–37(a).

* * * * *

11. The authority citation for § 270.12b–2 is added to read as follows:

Authority: * * *

* * * * *

Section 270.12b–2 is also issued under 15 U.S.C. 80a–6(c), 15 U.S.C. 80a–12(b), and 80a–37(a).

* * * * *

12. The authority citation for § 270.17a–8 continues to read as follows:

Authority: * * *

* * * * *

Section 270.17a–8 is also issued under 15 U.S.C. 80a–6(c) and 80a–37(a).

* * * * *

13. Section 270.6c–10 is revised to read as follows:

§ 270.6c–10 Exemptions for certain open-end management investment companies to impose deferred sales loads and other sales charges.

(a) *Deferred Sales Load.* (1) *Exemption.* Notwithstanding sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), and 80a–22(d), respectively] and § 270.22c–1, a fund, other than a registered separate account, and any exempted person may impose a deferred sales load on fund shares, if:

(i) The amount of the deferred sales load does not exceed a specified percentage of the net asset value or the offering price at the time of purchase; and

(ii) The terms of the deferred sales load are covered by the provisions of Rule 2830 of the Conduct Rules of the NASD; and

(iii) The same deferred sales load is imposed on all shareholders, except that a fund may offer scheduled variations in or elimination of a deferred sales load to a particular class of shareholders or transactions if the fund has satisfied the conditions in § 270.22d–1.

(2) *Load Reductions.* Nothing in this paragraph (a) prevents a fund from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load not yet paid.

(b) *Fund-Level Sales Charge.* (1) *Exemption.* Notwithstanding § 270.12b–2(b)(1), a fund may deduct an ongoing sales charge from fund assets if the cumulative ongoing sales charges imposed on a purchase of fund shares do not exceed the shareholder's maximum sales load, provided that:

(i) A fund may satisfy the requirements of this paragraph (b) if shares subject to an ongoing sales charge convert (without any shareholder action and in accordance with § 270.18f–3(f)(2)) to a fund share class without an ongoing sales charge, on or before the end of the conversion period;

(ii) Shares acquired by reinvestment of dividends or other distributions may be invested in a fund share class with an ongoing sales charge only if the reinvested shares convert to a share class without an ongoing sales charge no later than when the shares on which the dividend or distribution was declared convert;

(iii) A fund may offer scheduled variations in the conversion period to a particular class of shareholders or transactions if the fund has satisfied the conditions in § 270.22d–1; and

(iv) The fund does not acquire shares of another fund that, with respect to the class of shares acquired, deducts an ongoing sales charge.

(2) *Sales Charge Reductions.* Nothing in this paragraph (b) prevents a fund from offering to existing shareholders a new scheduled variation that would reduce the conversion period.

(3) *Changes to Ongoing Sales Charge.* No fund may:

(i) Institute or increase the rate of an ongoing sales charge applied to a fund share class or series after any public offering of the fund's voting shares or the sale of such shares to persons who are not organizers of the fund; or

(ii) Increase the amount of time after which a share class will automatically convert to a class of shares that does not have an ongoing sales charge, if it would increase the cumulative amount of ongoing sales charges imposed.

(c) *Account-Level Sales Charge.* Notwithstanding section 22(d) of the Act [15 U.S.C. 80a-22(d)], any fund class and any exempted person may offer or sell fund shares at a price other than the current public offering price described in the prospectus, if:

(1) The class does not impose an ongoing sales charge pursuant to § 270.6c–10(b), although it may impose a marketing and service fee pursuant to § 270.12b–2(b); and

(2) The fund discloses in its registration statement that it has elected to rely on this paragraph (c) for an exemption from section 22(d) of the Act [15 U.S.C. 80a–22(d)].

(d) *Definitions.* For purposes of this section:

(1) *Acquired security* has the same meaning as in § 270.11a–3(a)(1).

(2) *Conversion period* is the period beginning on the day that shares are purchased and ending on the last day of the calendar month during which the cumulative ongoing sales charge rates exceed the shareholder's maximum sales load rate. The maximum number of months in a conversion period is determined by dividing the shareholder's maximum sales load rate by the ongoing sales charge rate and multiplying the result by 12.

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid directly by a shareholder to a fund after purchase but before or upon redemption.

(4) *Distribution activity* means any "Distribution activity," as defined in § 270.12b–2(e)(2).

(5) *Exchanged security* has the same meaning as in § 270.11a–3(a)(4).

(6) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to effect transactions in, shares of a fund.

(7) *Fund* means a registered open-end management investment company, and includes a separate series of a fund.

(8) *Group of investment companies* has the same meaning as in § 270.11a–3(a)(5).

(9) *Maximum sales load* means the maximum sales load rate multiplied by the total dollar amount paid.

(10) *Maximum sales load rate* means the reference load minus the sum of the rates of:

(i) Any sales load (including a deferred sales load) incurred in connection with the purchase of fund shares; and

(ii) Any sales loads or ongoing sales charges previously paid with respect to an exchanged security within the same group of investment companies.

(11) *Ongoing sales charge* means any charges or fees deducted from fund assets to finance distribution activity in excess of the maximum rate permitted under § 270.12b–2(b). In the case of a fund ("the acquiring fund") that acquires shares of another fund (the "acquired fund"), ongoing sales charge means any charges or fees deducted from fund assets to finance distribution activity in excess of the acquiring fund's marketing and service fee (as defined in § 270.12b–2(e)(3)), without regard to any acquired fund's marketing and service fee.

(12) *Ongoing sales charge rate* is the annual ongoing sales charge, expressed as a percentage of net asset value.

(13) *Organizers of a fund* means any affiliated person of the fund, any affiliated person of such person, any promoter of the fund, and any affiliated person of such promoter.

(14) *Reference load* means:

(i) The highest sales load rate that the shareholder would have paid if, at the time of the purchase of fund shares, the shareholder had purchased a class offered by the fund that does not have an ongoing sales charge and for which the shareholder qualifies according to the fund's registration statement;

(ii) In the case of shares exchanged within the same group of investment companies, the highest applicable sales load rate of the acquired security or the exchanged security; or

(iii) If no reference load can be determined under paragraphs (d)(14)(i) or (d)(14)(ii) of this section, the reference load is the maximum sales charge rate permitted a fund that deducts an asset-based sales charge and

a service fee under Rule 2830(d)(2)(A) of the Conduct Rules of the NASD.

(15) *Sales load rate* is the sales load expressed as a percentage of the fund share offering price.

14. Section 270.11a–3 is amended by revising paragraphs (b)(4) and (b)(5)(i)(A) and (b)(5)(ii)(A) to read as follows:

§ 270.11a–3 Offers of exchange by open-end investment companies other than separate accounts.

* * * * *

(b) * * *

(4) Any sales load charged with respect to the acquired security is a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the sum of the rates of all sales loads and ongoing sales charges (as permitted under § 270.6c–10(b)), previously paid on the exchanged security, *Provided that:*

(i) The percentage rate of any sales load charged when the acquired security is redeemed, that is solely the result of a deferred sales load imposed on the exchanged security, may be no greater than the excess, if any, of the applicable rate of such sales load, calculated in accordance with paragraph (b)(5) of this section, over the sum of the rates of all ongoing sales charges and sales loads previously paid on the acquired security, and

(ii) In no event may the sum of the rates of all ongoing sales charges and sales loads imposed prior to and at the time the acquired security is redeemed, including any ongoing sales charges and sales load paid or to be paid with respect to the exchanged security, exceed the maximum sales load rate, calculated in accordance with paragraph (b)(5) of this section, that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate;

(5) * * *

(i) * * *

(A) Reduced by the sum of the rates of all ongoing sales charges collected on the acquired security pursuant to § 270.6c–10(b), and

* * * * *

(ii) * * *

(A) The deferred sales load is reduced by the sum of the rates of all ongoing sales charges previously collected on the exchanged security pursuant to § 270.6c–10(b), and

* * * * *

§ 270.12b–1 [Removed]

15. Section 270.12b–1 is removed.

16. Section 270.12b–2 is added to read as follows:

§ 270.12b–2 Investment company distribution fees.

(a) *Preliminary Matters.* (1) Except as provided in this section, it is unlawful for any fund (other than a fund complying with the provisions of section 10(d) of the Act [15 U.S.C. 80a–10(d)]) to act as a distributor of securities of which it is the issuer, except through an underwriter.

(2) For purposes of this section, a fund will be deemed to be acting as a distributor of securities of which it is the issuer, other than through an underwriter, if it directly or indirectly uses fund assets to finance any distribution activity.

(b) *Marketing and Service Fee.* A fund may use fund assets to finance distribution activity, provided that, with regard to any class of the fund:

(1) All charges and fees deducted from fund assets to finance distribution activity do not exceed the maximum rate of the service fee allowed under Rule 2830 of the NASD Conduct Rules, except as permitted by § 270.6c–10(b);

(2) If a fund (the "acquiring fund") acquires shares of another fund (the "acquired fund"), the combined rate of the marketing and service fees of the acquiring fund and any acquired fund to finance distribution activities does not exceed the maximum rate permitted in paragraph (b)(1) of this section.

(3) The marketing and service fee (or any increase in the rate of such a fee) has been approved by a vote of at least a majority of the fund's outstanding voting securities if the fee is instituted or increased after any public offering of the fund's voting securities or the sale of such securities to persons who are not affiliated persons of the company, affiliated persons of such persons, promoters of the fund, or affiliated persons of such promoters.

(c) *Directed Brokerage.* Notwithstanding any other provision of this section, a fund may not:

(1) Compensate a broker or dealer for any promotion or sale of shares issued by that fund by directing to the broker or dealer:

(i) The fund's portfolio securities transactions; or

(ii) Any remuneration, including but not limited to any commission, mark-up, mark-down, or other fee (or portion thereof) received or to be received from the fund's portfolio transactions effected through any other broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer); and

(2) Direct its portfolio securities transactions to a broker or dealer that promotes or sells shares issued by the fund, unless the fund (or its investment adviser):

(i) Is in compliance with the provisions of paragraph (c)(1) of this section with respect to that broker or dealer; and

(ii) Has implemented, and the fund's board of directors (including a majority of directors who are not interested persons of the fund) has approved, policies and procedures reasonably designed to prevent:

(A) The persons responsible for selecting brokers and dealers to effect the fund's portfolio securities transactions from taking into account the brokers' and dealers' promotion or sale of shares issued by the fund or any other registered investment company; and

(B) The fund, and any investment adviser and principal underwriter of the fund, from entering into any agreement (whether oral or written) or other understanding under which the fund directs, or is expected to direct, portfolio securities transactions, or any remuneration described in paragraph (c)(1)(ii) of this section, to a broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer) in consideration for the promotion or sale of shares issued by the fund or any other registered investment company.

(d) *Grandfathered Rule 12b–1 Fees.* Until [date 5 years after compliance date of the rule], notwithstanding any other provision in this section, a fund may act as a distributor of securities sold prior to [the compliance date of rule 12b–2] subject to a rule 12b–1 plan approved under § 270.12b–1 (2010 version) as in effect prior to [the compliance date of rule 12b–2], *provided that:*

(1) The fund's board of directors may vote to eliminate the provisions in the fund's rule 12b–1 plan that were required by paragraphs (b)(3)(i) (annual approval), (b)(3)(ii) (quarterly reports) and (b)(3)(iii) (termination) of § 270.12b–1 (2010 version);

(2) With regard to any class of the fund, the fund does not increase the annual rate of the fee paid under its rule 12b–1 plan in the most recent fiscal year, and

(3) As of [date 5 years after compliance date of the final rule] all securities subject to paragraph (d) of this section must be exchanged or converted into securities of a class that does not deduct an ongoing sales charge as defined in § 270.6c–10(d)(11) and that does not charge a marketing and service fee in excess of the annual rate of the fee paid under its rule 12b–1 plan in the most recent fiscal year.

(e) *Definitions.* For purposes of this section:

(1) *Fund* means a registered open-end management investment company, and includes a separate series of the fund.

(2) *Distribution activity* means any activity which is primarily intended to result in the sale of shares issued by a fund, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature.

(3) *Marketing and Service Fee* means any charges or fees deducted from fund assets under paragraph (b)(1) of this section.

17. Section 270.17a–8 is amended by revising paragraph (a)(3)(iv) to read as follows:

§ 270.17a–8 Mergers of affiliated companies.

(a) * * *

(3) * * *

(iv) Any distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the surviving company pursuant to provisions of § 270.12b–2(b) or (d) or § 270.6c–10(b), are no greater than the distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the merging company.

* * * * *

18. Section 270.17d–3 is amended by revising paragraph (a) to read as follows:

§ 270.17d–3 Exemption relating to certain joint enterprises or arrangements concerning payment for distribution of shares of a registered open-end management investment company.

* * * * *

(a) Such agreement is made in compliance with the provisions of § 270.12b–2(b) or (d) or § 270.6c–10(b); and

* * * * *

19. Section 270.18f–3 is amended by revising paragraph (f)(2)(ii) to read as follows:

§ 270.18f–3 Multiple class companies.

* * * * *

(f) * * *

(2) * * *

(ii) The expenses, including distribution payments authorized under § 270.12b–2(b) or (d) or § 270.6c–10(b), for the target class are not higher than the expenses, including distribution payments authorized under § 270.12b–2(b) or (d) or § 270.6c–10(b), for the purchase class; and

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

20. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

21. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Adding the definition "asset-based distribution fee" in alphabetical order to General Instructions A;

b. Revising the "Annual Fund Operating Expenses" fee table and Instruction 3(b) to Item 3;

c. Revising paragraph b and removing the Instruction to paragraph b of Item 12;

d. Revising paragraph g and adding an Instruction to paragraph g of Item 19;

e. Adding paragraph d to item 25;

f. Revising Instruction 5 to paragraph (b)(4) of Item 26;

g. In the expense example in paragraph (d)(1) of Item 27, removing the reference to "distribution [and/or service](12b–1) fees" and adding in its place "asset-based distribution fees";

h. In Instruction 2(a)(i) following paragraph (d)(1) to Item 27, removing the reference to "Distribution [and/or service](12b–1) fees" and adding in its place "asset-based distribution fees"; and

i. Removing and reserving paragraph (m) of Item 28.

The revisions read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

General Instructions

A. Definitions

* * * * *

_____"*Asset-Based Distribution Fee*" means a fee deducted from Fund assets to finance distribution activities pursuant to rule 12b–2(b) (17 CFR 270.12b–2(b)) ("Marketing and Service Fee"), rule 12b–2(d) (17 CFR 270.12b–2(d)), and/or rule 6c–10(b) (17 CFR 270.6c–10(b)) ("Ongoing Sales Charge").

* * * * *

Item 3. Risk/Return Summary: Fee Table

* * * * *

Annual Fund Operating Expenses (expenses that you pay each year as a percentage of the value of your investment).

Management Fees	____%
Ongoing Sales Charge	____%
Other Expenses	____%
Marketing and Service Fee	____%
	____%
	____%
Total Annual Fund Operating Expenses	____%

* * * * *

Instructions.

* * * * *

3. Annual Fund Operating Expenses

* * * * *

(b) "Ongoing Sales Charge" includes all expenses incurred during the most recent fiscal year pursuant to rule 6c–10(b) (17 CFR 270.6c–10(b)). "Marketing and Service Fee" includes all expenses incurred during the most recent fiscal year pursuant to rule 12b–2(b) (17 CFR 270.12b–2(b)).

* * * * *

Item 12. Distribution Arrangements

* * * * *

(b) *Asset-Based Distribution Fees.* If the Fund deducts an Asset-Based Distribution Fee, state separately the rate of Ongoing Sales Charges, Marketing and Service Fees, or fees charged pursuant to rule 12b–2(d) (17 CFR 270.12b–2(d)), as applicable, and state each one's purpose and general terms, and provide disclosure to the following effect:

(1) The Fund deducts a fee for the sale and distribution of its shares and, if applicable, for services provided to fund investors. If the Fund deducts a fee for such services, describe the nature and extent of services provided to fund investors.

(2) For Multiple Class Funds that offer more than one Class in the prospectus, discuss the general circumstances under which an investment in a Class that deducts an Asset-Based Distribution Fee may be more or less advantageous than an investment in a Class that either does not deduct an Asset-Based Distribution Fee or a Class that deducts a different Asset-Based Distribution Fee. Include the effect of different holding periods and investment amounts in this description.

(3) For Funds that deduct an Ongoing Sales Charge, the number of months/years that an investor's shares would be subject to the charge before automatically converting to a Class without such a deduction.

* * * * *

Item 19. Investment Advisory and Other Services

* * * * *

(g) *Asset-Based Distribution Fees.* If the Fund deducts an Asset-Based

Distribution Fee, provide a description of the fee(s) and how they are used, including a list of the principal types of activities for which payments are or will be made (*e.g.,* advertising; printing and mailing of prospectuses to other than current shareholders; compensation to underwriters, compensation to broker-dealers, shareholder servicing fees, *etc.*).

Instruction. If a Fund offers a Class that deducts both an Ongoing Sales Charge and a Marketing and Service Fee, separate the list of activities according to type of fee.

* * * * *

Item 25. Underwriters

* * * * *

(d) If the fund has elected to rely on rule 6c–10(c) (17 CFR § 270.6c–10(c)) to permit the fund or its underwriter to distribute shares at a price other than a current public offering price described in the prospectus, state that the fund has made this election.

* * * * *

Item 26. Calculation of Performance Data

* * * * *

(b) * * *

(4) * * *

Instructions.

* * * * *

5. Include expenses accrued due to any Asset-Based Distribution Fees owed in the expenses accrued for the period. Reimbursement accrued may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

* * * * *

Item 28. Exhibits

* * * * *

(m) *Reserved.*

* * * * *

22. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Revising Instruction 2 to Item 7(a);

b. Revising paragraph (f) and the Instruction to paragraph (f) of Item 21;

c. Revising Instruction 5 to Item 26(b)(ii).

The revisions read as follows:

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 7. Deductions and Expenses

(a) * * *

Instructions.

* * * * *

2. If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify from what source the shortfall, if any, will be paid. If any shortfall is to be made up from assets from the Insurance Company's general account, disclose, if applicable, that any amounts paid by the Insurance Company may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account. If Registrant directly or indirectly pays any asset-based distribution expenses under rule 12b–2(b) (17 CFR 270.12b–2(b)), rule 12b–2(d) (17 CFR 270.12b–2(d)), or rule 6c–10(b) (17 CFR 270.6c–10(b)), provide a description of the expenses and list the principal types of activities for which payments are made.

* * * * *

Item 21. Investment Advisory and Other Services

* * * * *

(f) If the Registrant deducts any asset-based distribution fees under rule 12b–2(b) (§ 270.12b–2(b)), rule 12b–2(d) (17 CFR 270.12b–2(d)), or rule 6c–10(b) (17 CFR 270.6c–10(b)), provide a description of the fee(s) and how they are used, including a list of the principal types of activities for which payments are or will be made (*e.g.,* advertising; printing and mailing of prospectuses to other than current shareholders; compensation to underwriters, compensation to broker-dealers, shareholder servicing fees, *etc.*).

Instruction. If a Registrant deducts both an ongoing sales charge and a marketing and service fee, separate the list of activities according to type of fee.

* * * * *

Item 26. Calculation of Performance Data

* * * * *

(b) * * *

(ii) * * *

* * * * *

Instructions.

* * * * *

5. Include all asset-based distribution expenses accrued under rule 12b–2(b) (17 CFR 270.12b–2(b)), rule 12b–2(d) (17 CFR 270.12b–2(d)), and rule 6c–10(b) (17 CFR 270.6c–10(b)) among the expenses accrued for the period. Reimbursement of expenses deducted from fund assets pursuant to rule12b–2(b) (17 CFR 270.12b–2(b)), rule 12b–2(d) (17 CFR 270.12b–2(d)), and rule 6c–10(b) (17 CFR 270.6c–10(b)) may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

* * * * *

23. Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

a. In the "Total Annual [Portfolio Company] Operating Expenses" table in Item 3(a), removing the reference to "distribution [and/or service](12b–1) fees" and adding in its place "asset-based distribution fees."

b. In Instruction 16 to Item 3 adding a definition of "asset-based distribution fees."

The addition reads as follows:

Note: the text of Form N–4 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–4

* * * * *

Item 3. Synopsis

* * * * *

16. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the portfolio company), any other management fees payable by the portfolio company to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses." "Asset-based distribution fee" includes all asset-based distribution expenses paid under rule 12b–2(b) (17 CFR 270.12b–2(b)), rule 12b–2(d) (17 CFR 270.12b–2(d)), and rule 6c–10(b) (17 CFR 270.6c–10(b)).

* * * * *

24. Form N–6 (referenced in §§ 239.17c and 274.11d) is amended by:

a. In the "Total Annual [Portfolio Company] Operating Expenses" table in Item 3, removing the reference to "distribution [and/or service](12b–1) fees" and adding in its place "asset-based distribution fees."

b. Adding paragraph (g) to Instruction 4 of Item 3.

The addition reads as follows:

Note: The text of Form N–6 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–6

* * * * *

Item 3. Risk/Benefit Summary: Fee Table

* * * * *

Instructions.

* * * * *

(4) * * *

(g) "Asset-based distribution fee" includes all asset-based distribution expenses paid under rule 12b–2(b) (17 CFR 270.12b–2(b)), rule 12b–2(d) (17 CFR 270.12b–2(d)), and rule 6c–10(b) (17 CFR 270.6c–10(b)).

* * * * *

25. Form N–SAR (referenced in §§ 249.330 and 274.101) is amended by:

a. Revising Item 40 in Instructions to Specific Items;

b. Removing Items 41–44 in Instructions to Specific Items; and

c. Removing the last sentence in the Instruction to Sub-Item 72DD2 in Instructions to Specific Items.

The revision reads as follows:

Note: The text of Form N–6 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–SAR

* * * * *

Instructions to Specific Items

* * * * *

Item 40: Plans Adopted Pursuant to Former Rule 12b–1

Rule 12b–1 under the Act (17 CFR 270.12b–1), has been rescinded. Registrants that have grandfathered 12b–1 share classes pursuant to rule 12b–2(d) (17 CFR 270.12b–2(d)), should answer this question "Yes." Registrants that do not have grandfathered 12b–1 share classes pursuant to rule 12b–2(d) under the Act should answer this question "No."

Dated: July 21, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–18305 Filed 8–3–10; 8:45 am]

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Federal Register

Wednesday,
August 4, 2010

Part III

Federal Communications Commission

47 CFR Parts 1, 27 and 95

Review of Personal Radio Services Rules; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27 and 95

[WT Docket No. 10–119; FCC 10–106]

Review of Personal Radio Services Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to update, reorganize, simplify and streamline its Personal Radio Services rules to reflect technological advances and other changes in the way the American public uses the Personal Radio Services. In addition to improving the clarity of the rules, this document includes proposals intended to reduce unnecessary regulatory burdens on users, improve spectrum use, provide for enhanced equipment operating features, and promote the safety and consumer interests of operators. The document also proposes to reclassify one of the existing Personal Radio Services, specifically the 218–219 MHz service, as a Miscellaneous Wireless Communications Service, and accordingly move its rules from one part to another.

DATES: Submit comments on or before September 3, 2010 and reply comments on or before September 20, 2010.

ADDRESSES: You may submit comments, identified by WT Docket No. 10–119, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission Web site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *Mail:* Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. 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.
- *Hand delivery/courier:* Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0503 or TTY: 202–418–0432. All submissions received must include the agency name and docket numbers for this rulemaking, WT Docket No. 10–119. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs.*

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

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Mobility Division, Wireless Telecommunications Bureau, *jay.jackson@fcc.gov,* 202–418–1309.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's (the Commission's) *Notice of Proposed Rulemaking* (NPRM) in WT Docket No. 10–119, FCC 10–106, adopted on June 1, 2010, and released on June 7, 2010. Contemporaneous with this document, the Commission issues a *Memorandum Opinion and Order on Reconsideration* (published elsewhere in this publication). The full text of this document may be downloaded from the FCC Web site (*http://www.fcc.gov*) at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-106A1.pdf.* The full text is also available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. A copy of the complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Alternative formats are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

1. This *NPRM* proposes to streamline, update and reorganize part 95 of the Federal Communications Commission (FCC) rules, 47 CFR part 95, which provide the regulatory framework for the Personal Radio Services. The Personal Radio Services are a family of radio services that provide for a variety of wireless devices operated by individual persons, primarily for their own personal use, or to provide benefits to other individual persons. For example, in some of the Personal Radio Services, such as the Family Radio Service and the General Mobile Radio Service, the general public may purchase FCC-certified two-way radios (sometimes called "walkie-talkies") that they can use to communicate with each other directly when they are within range (usually a short distance) of each other. Some other Personal Radio Service applications include radio-controlled aircraft and other hobby vehicles, wireless devices to aid persons with hearing difficulties, medical telemetry and implant devices that provide medical benefits to patients, and personal beacons to help search and rescue teams locate persons in distress in wilderness areas. Unlike commercial mobile radio services such as cellular telephone service, the Personal Radio Services are not used by companies to provide interconnected telephone or broadband telecommunications services to subscribers. Because of the very large number of wireless devices used in most of the Personal Radio services, the FCC has authorized the majority of their use by rule, rather than by issuing a separate station license for each device.

2. Part 95 has been amended by the FCC in a piecemeal fashion numerous times during the past three decades, usually to add a subpart to provide for a new Personal Radio Service. As a result, the structure of part 95 has become somewhat disorganized. The FCC has not undertaken a comprehensive review of part 95 in many years and, as a result, it contains many rules that are in effect redundant or inconsistent, or which use outdated technical terminology. The *NPRM* proposes amendments to correct these problems and seeks comment from the public on the proposals. Furthermore, some of the older Personal Radio Services have evolved substantially in technology and usage over the years and the rules for these services also need to be updated. One part 95 service, the 218–219 MHz service, has evolved so much from its original concept that it no longer shares the personal characteristics of the other Personal Radio Services; it has become more like a commercial service. Accordingly, the *NPRM* proposes to transfer all of the rules for this service from part 95 to part 27 of the FCC rules, because it has a regulatory framework that is similar to that of the Miscellaneous Wireless Communications Services.

3. The *NPRM* also proposes to reduce burdens on persons who use Personal Radio Services by authorizing the operation of some or all General Mobile Radio Service (GMRS) stations by rule, or alternatively, by extending GMRS license terms from five to ten years, and by relaxing GMRS eligibility requirements. Additionally, the *NPRM* proposes to improve spectrum use efficiency by providing for the use of narrower emission bandwidths in the GMRS. The *NPRM* further proposes to allow for the transmission of Global Positioning System (GPS) location

information and user-generated text messages on certain GMRS channels, and reviews the technical operating parameters of GMRS equipment. Additionally, the *NPRM* reviews the technical and operating requirements for the Citizens Band (CB) Radio Service and proposes to permit the use of "hands-free" microphones in the CB Radio Service. Finally, the *NPRM* proposes to promote the safety and consumer interests of Personal Radio Service operators by (1) requiring routine evaluation of GMRS portable devices for radio frequency exposure, (2) no longer granting certification of radios that have voice scrambling capability and "combination radios" capable of transmitting in the safety services in addition to the Personal Radio Services, and (3) preventing the marketing of ersatz devices using the term "Personal Locator Beacon", by limiting the use of that term to genuine personal locator beacons that meet the international technical requirements for such devices.

Specific Proposals

4. The following is a list of the specific proposals in the *NPRM,* and the paragraph number in the full text where discussion of the proposal may be found. The FCC invites public comment on any or all of them. In this *NPRM,* the FCC proposes to:

a. Consolidate all similar or duplicative administrative rules into subpart A (para. 10);

b. Consolidate all technical rules into subpart B (para. 12);

c. List the frequencies for each service in a table and designate each frequency by a channel number (para. 12);

d. Express frequency tolerance requirements in terms of parts per million (ppm) of the carrier or reference frequency (para. 14);

e. Revise the emission limit rule to reduce duplication, conform the way requirements are presented and to increase clarity (para. 18);

f. Prohibit voice obscuring or scrambling in the GMRS, FRS and CB Radio Services and no longer certify equipment with such features (para. 20);

g. Eliminate the requirement for individual licensing for GMRS stations and authorize the operation of GMRS stations by rule (para. 27);

h. Extend the term of GMRS licenses from 5 to 10 years, in the event that the FCC decides not to eliminate licenses as proposed (para. 28);

i. Eliminate the minimum age requirement for GMRS (para. 29);

j. Limit the power of portable (hand-held) GMRS transmitters to 2 Watts effective radiated power (ERP) (para. 32);

k. Require routine specific absorption rate (SAR) evaluation for portable GMRS transmitters (para. 33);

l. Change the power limit for GMRS small base stations from 5 Watts ERP to 5 Watts transmitter power output (para. 35);

m. Implement 12.5 kHz narrowbanding (reduction in authorized channel bandwidth) in the GMRS (para. 37);

n. Remove rule (47 CFR 95.29(g)) that allows grandfathered operation for certain fixed GMRS stations authorized before March 18, 1968 (para. 38);

o. Permit transmission of Global Positioning System (GPS) data in the GMRS (para. 42);

p. No longer certify Personal Radio Services equipment that have transmitting capability in services licensed under 47 CFR parts 80, 87, 90 and 97 (para. 47);

q. Allow the use of hands-free microphones that operate under 47 CFR part 15 in the CB Radio Service (para. 53);

r. Consolidate special equipment certification rules that apply to CB Radio equipment (para. 56);

s. Relocate the 218–219 MHz Service rules from 47 CFR part 95 subpart F to a new subpart at the end of 47 CFR part 27 (para. 62);

t. Eliminate the rule (47 CFR 95.813(b)) that prevents licensees that fail to construct a 218–219 MHz system from obtaining any new 218–219 MHz authorization for a period of 3 years, and to instead apply 47 CFR 27.14(a), providing that such licensee would forfeit the license for the unbuilt system and be ineligible to regain it (para. 63);

u. Replace references to analog TV Grade B contour with appropriate references to digital TV in the 218–219 MHz service rules (para. 65);

v. Clarify that the term "PLB" refers only to a personal locator beacon that meets the technical requirements for 406 MHz PLBs, and make unlawful the marketing of non-compliant devices as "PLBs" (para. 68); and,

w. Update the PLB rules to reference the new revised Radio Technical Commission for Maritime (RTCM) 406 MHz PLB standards (para. 69).

Request for Comment on Other Issues

5. In addition to the specific proposals above, in the *NPRM* the FCC specifically invites comment on a number of other issues where it believes that the applicable rules may need revision. The following is a list of the other issues for which the FCC has specifically requested public comment in the *NPRM,* and the paragraph number in the full text where related discussion may be found. The FCC specifically requests comment on:

a. Whether user-friendly fact sheets should be provided on the FCC Web site (para. 10);

b. Whether to retain the existing "plain language" question and answer format used in the rules (para. 11);

c. How transmitting power limits should be expressed in the rules (para. 16);

d. Whether the rule requiring crystal control of the transmitter frequency is still necessary (para. 22);

e. Whether channel sharing requirements developed for the CB Radio service should also apply to the GMRS and FRS (para. 55);

f. Whether the rule limiting the duration of transmissions in the CB Radio service (47 CFR 95.416) should be retained, revised or eliminated (para. 55);

g. Whether the rules prohibiting transmission of music or other entertainment material, sound effects, or sounds to attract attention in the CB Radio service (47 CFR 95.413(a)(6) and 47 CFR 95.416(a)(7)) should be retained, revised or eliminated (para. 55);

h. Whether the rule limiting the distance over which stations may communicate in the CB Radio service (47 CFR 95.413(a)(9)) should be retained, revised or eliminated (para. 57);

i. Whether the transmitting power limit in the CB Radio service should be reduced (para. 57);

j. Whether use of directional antennas in the CB Radio service should be prohibited (para. 57);

k. Whether to retain, eliminate or modify the rule allowing continuous transmissions lasting longer than 3 minutes in the R/C service only when one or more changes are made during each minute of transmission (47 CFR 95.215(b)) (para. 58);

l. What measures could be taken to provide greater operational or technical flexibility in the use of the 218–219 MHz radio service (para. 60);

m. Whether to eliminate the requirement for 218–219 MHz licensees to file a plan analyzing interference potential (para. 64);

n. What changes to make to the 218–219 MHz rules in regard to protection of TV channel 13 reception, in view of the digital television (DTV) conversion (para. 65);

o. What changes may be needed to the rules governing the Low Power Radio Service (LPRS), Wireless Medical Telemetry Service (WMTS), Medical Device Radiocommunication Service

(MedRadio), Multi-Use Radio Service (MURS) and Dedicated Short-Range Communications Service (On-Board Units) (para. 70).

Procedural Matters

6. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated above. Comments and reply comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or, (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, GN Docket No. 97–113, *Report and Order,* 13 FCC Rcd 11322 (1998).

7. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

8. *Paper Filers:* Parties choosing to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

9. 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 at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express and Priority mail must be addressed to 445 12th St., 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 e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at: *http://www.bcpiweb.com.*

Regulatory Flexibility Act

10. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. The two statutorily-mandated criteria that the FCC must apply when determining whether an Initial Regulatory Flexibility Certification is appropriate are: (1) Whether the proposed rules, if adopted, would have a significant economic effect, and (2) if so, whether the economic effect would directly affect a substantial number of small entities. Upon application of these criteria, summarized in the following paragraphs, the FCC finds it appropriate to certify that the proposals in this *NPRM,* if adopted, would not have a significant economic effect on a substantial number of small entities.

12. With respect to the first criterion, the FCC finds that adoption of the proposals in the *NPRM* would not have a significant economic effect. In reaching this determination, the FCC first notes that most of the proposed changes to part 95 in the *NPRM* are editorial and organizational in nature rather than substantive, and as such would not have any economic effect at all on any entities, large or small. Of the remaining proposed changes in the *NPRM,* many of them would directly affect only Personal Radio users, who are individual persons not considered to be small entities for the purpose of the RFA by the FCC, the SBA or Congress.

13. In addition to the editorial rule changes and those that affect only individual persons, however, the *NPRM* also proposes rules that would affect Personal Radio Service equipment manufacturers. Some of these rules would allow equipment manufacturers the flexibility to include certain new features in their future Personal Radio Services products, if they so desire. Because such rules are permissive and not mandatory requirements, any economic effects on these manufacturers, such as an increase in sales or manufacturing cost per unit, would be the result of the equipment manufacturer's decision as to whether to take advantage of the increased options. As stated *supra,* the *NPRM* proposes (1) to require routine evaluation of certain GMRS radios for radio frequency exposure, (2) that the FCC no longer grant certification of certain types of personal radios (those combined with safety service radios and those with voice scrambling capability), and (3) to restrict future marketing use of the term "personal locator beacon". If adopted, these proposed rules could require some equipment manufacturers to make adjustments to their future product plans (in regard to combination and voice-scrambling radios) or to alter product labeling (in regard to personal locator beacons). The FCC believes however, that the cost to manufacturers of implementing any of these proposals would be small in comparison to the costs of design, manufacturing, distribution and marketing of these products. Therefore, the FCC concludes that adoption of the *NPRM* proposals would not have more than a *de minimis,* if any, economic effect on manufacturers.

14. As for the second criterion, the FCC, while not in any way conceding the preceding point, considers *arguendo* the case that one or more proposals in the *NPRM,* if adopted, turns out to have a significant economic effect. In such hypothetical case, the FCC considers whether the economic effect would directly affect a substantial number of small entities. Initially, the FCC notes that the substantive proposals in the *NPRM* would directly affect only

operators of Personal Radio Services stations and entities who seek FCC certification of equipment for use in the Personal Radio Services. The former are individual persons, and that latter are typically large manufacturing organizations, neither of which is considered to be small entities for purposes of the RFA by the FCC, the SBA or Congress. The Personal Radio Services equipment market is a large, nationwide market and most Personal Radio Services devices are mass-marketed directly to the general public as consumer goods. This necessitates a large-volume manufacturing capability that a small entity typically does not have. Although there are small-entities that make accessory devices for the Personal Radio Services, and there are small-entity retailers, such as truck stops, that sell Personal Radio Services equipment (*e.g.* CB radios), the proposals outlined *supra* would not directly affect any of them. In view of these factors, the FCC concludes that the proposals in the *NPRM* would not directly affect any small entities, and thus obviously by reason would not directly affect a substantial number of small entities.

15. The FCC therefore certifies, pursuant to the RFA, that the proposals in this *NPRM,* if adopted, would not have a significant economic impact on a substantial number of small entities. The FCC will send a copy of the *NPRM,* including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Initial Paperwork Reduction Act of 1995 Analysis

16. This document proposes to eliminate an information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

List of Subjects in 47 CFR Parts 1, 27 and 95

Radio.

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, 27 and 95 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, 303(r), and 309.

2. Section 1.1307 is amended by revising paragraph (b)(2) as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services (ship earth stations only), the Specialized Mobile Radio Service, and the 3650 MHz Wireless Broadband Service authorized under parts 22, 24, 25, 27, 80, and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), 15.319(i), and 15.407(f) of this chapter. Portable devices as defined in § 2.1093(b) of this chapter operating in the General Mobile Radio Service (GMRS), the Wireless Medical Telemetry Service (WMTS) and the Medical Device Radiocommunication Service (MedRadio) subparts C, H and I of part 95 of this chapter are subject to radio frequency radiation exposure requirements as specified in §§ 2.1093 and 95.49 of this chapter. Equipment authorized for use in the Medical Device Radiocommunication Service (MedRadio) as a medical implant or body-worn transmitter (as defined in Appendix 1 to part 95, subpart E of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in § 2.1093 of this chapter by finite difference time domain computational modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate measurement data be submitted. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

3. Section 27.1 is amended by adding paragraph (b)(10) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(10) 218–219 MHz.

* * * * *

4. Amend § 27.2 by adding paragraph (d) to read as follows:

§ 27.2 Permissible communications.

* * * * *

(d) *218–219 MHz.* A 218–219 MHz Service system may provide any fixed or mobile communications service to subscribers within its service area on its assigned spectrum, consistent with the Commission's rules and the regulatory status of the system to provide services on a common carrier or private basis.

5. Amend § 27.5 by adding paragraph (j) to read as follows:

§ 27.5 Frequencies.

* * * * *

(j) *218–219 MHz band.* There are two frequency segments available for assignment to the 218–219 MHz Service in each service area. Frequency segment A is 218.000–218.500 MHz. Frequency segment B is 218.501–219.000 MHz.

6. Amend § 27.10 by revising paragraph (a) and by adding paragraph (e) to read as follows:

§ 27.10 Regulatory status.

* * * * *

(a) *Single authorization.* Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, private internal communications, and broadcast

services. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service. A system in the 218–219 MHz Service may not provide broadcast services. An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status for which authorization is required to provide a specific communications service.

* * * * *

(e) *Pre-existing 218–219 MHz licenses.* Licenses in the 218–219 MHz Service granted before April 9, 2001, are authorized to provide services on a private (non-common carrier) basis. Licensees may modify this initial status pursuant to paragraph (d) of this section.

7. Amend § 27.11 by adding paragraph (j) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(j) *218–219 MHz band.* There are two frequency segments available for assignment to the 218–219 MHz Service in each service area. Frequency segment A is 218.000–218.500 MHz. Frequency segment B is 218.501–219.000 MHz.

8. Amend § 27.13 by adding paragraph (i) to read as follows:

§ 27.13 License period.

* * * * *

(i) *218–219 MHz.* Authorizations for the 218–219 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal. Licenses for individually-licensed cellular transmitter stations will be issued for a period running concurrently with the license of the associated 218–219 MHz Service system with which they are licensed.

9. Amend § 27.14 by redesignating paragraphs (g) through (o) as (h) through (p), and adding paragraphs (g), (q) and (r), to read as follows:

§ 27.14 Construction requirements; criteria for renewal.

* * * * *

(g) Comparative renewal proceedings do not apply to licensees holding authorizations for the 218–219 MHz band. These licensees must file a renewal application in accordance with the provisions set forth in § 1.949 of this chapter.

* * * * *

(q) Each licensee holding authorizations in the 218–219 MHz band must make a showing of "substantial service" within ten years of the license grant. A "substantial service" assessment will be made at renewal pursuant to the provisions and procedures contained in § 1.949 of this chapter.

(r) Each licensee holding authorizations in the 218–219 MHz band must file a report informing the Commission of the service status of its system. The report must be labeled as an exhibit to the renewal application. At minimum, the report must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its 218–219 MHz Service systems;

(4) A list, including addresses, of all component cellular transmission stations constructed; and

(5) Copies of all FCC orders finding the licensee to have violated the Communications Act or any Commission rules or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

10. Amend § 27.50 by adding paragraph (j) to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(j) The following power and antenna height requirements apply to stations transmitting in the 218–219 MHz band:

(1) The effective radiated power (ERP) of each cellular transmitter station (CTS) and response transmitter unit (RTU) shall be limited to the minimum necessary for successful communications. No CTS or fixed RTU may transmit with an ERP exceeding 20 watts. No mobile RTU may transmit with an ERP exceeding 4 watts.

(2) The overall height from ground to topmost tip of a CTS antenna shall not exceed the height necessary to assure adequate service. Certain CTS antennas must be individually licensed to the 218–219 MHz System licensee (*see* § 27.1403(b)) and the antenna structures of which they are a part must be registered with the Commission (*see* part 17 of this chapter).

(3) The RTU may be connected to an external antenna not more than 6.1 m (20 feet) above ground or above an existing man-made structure (other than an antenna structure). Connectors that are used to connect RTUs to an external antenna shall not be of the types generally known as "F-type" or "BNC type."

11. Amend § 27.53 by adding paragraph (o) to read as follows:

§ 27.53 Emission limits.

* * * * *

(o) For operations in the 218–219 MHz band, all transmissions by each cellular transmitter station and by each response transmitter unit shall use an emission type that complies with the following standard for unnecessary radiation.

(1) All spurious and out-of-band emissions shall be attenuated:

(i) Zero dB on any frequency within the authorized frequency segment;

(ii) At least 28 dB on any frequency removed from the midpoint of the assigned frequency segment by more than 250 kHz up to and including 750 kHz;

(iii) At least 35 dB on any frequency removed from the midpoint of the assigned frequency segment by more than 750 kHz up to and including 1250 kHz;

(iv) At least 43 + 10 log (P) dB on any frequency removed from the midpoint of the assigned frequency segment by more than 1250 kHz.

(2) When testing for certification, all measurements of unnecessary radiation are performed using a carrier frequency as close to the edge of the authorized frequency segment as the transmitter is designed to be capable of operating.

(3) The resolution bandwidth of the instrumentation used to measure the emission power shall be 100 Hz for measuring emissions up to and including 250 kHz from the edge of the authorized frequency segment, and 10 kHz for measuring emissions more than 250 kHz from the edge of the authorized frequency segment. If a video filter is used, its bandwidth shall not be less than the resolution bandwidth. The power level of the highest emission within the frequency segment, to which the attenuation is referenced, shall be remeasured for each change in resolution bandwidth.

12. Add subpart O to part 27 to read as follows:

Subpart O—218–219 MHz Band

Sec.

27.1401 Scope.
27.1402 218–219MHz service description.
27.1403 License requirements.
27.1404 License application.
27.1405 Competitive bidding proceedings.
27.1406 License transferability.
27.1407 Station identification.
27.1408 Station inspection.
27.1409 Certification.
27.1410 Interference.

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

§ 27.1401 Scope.

This subpart sets out the regulations governing the licensing and operation of a 218–219 MHz system. This subpart supplements part 1, subpart F of this chapter, which establishes the requirements and conditions under which commercial and private radio stations may be licensed and used in the Wireless Telecommunications Services.

§ 27.1402 218–219 MHz service description.

(a) The 218–219 MHz Service is authorized for system licensees to provide communication service to subscribers in a specific service area.

(b) The components of each 218–219 MHz Service system are its administrative apparatus, its response transmitter units (RTUs), and one or more cell transmitter stations (CTSs). RTUs may be used in any location within the service area. CTSs provide service from a fixed point, and certain CTSs must be individually licensed as part of a 218–219 MHz Service system. *See* § 27.1403.

(c) Each 218–219 MHz Service system service area is one of the cellular markets as defined in § 22.909 of this chapter, unless modified pursuant to § 27.15.

§ 27.1403 License requirements.

(a) Each 218–219 MHz Service system must be licensed in accordance with part 1, subpart F of this chapter.

(b) Each cellular transmitter station (CTS) where the antenna does not exceed 6.1 meters (20 feet) above ground or an existing structure (other than an antenna structure) and is outside the vicinity of certain receiving locations (*see* § 1.924 of this chapter) is authorized under the 218–219 MHz System license. All other CTS must be individually licensed.

(c) All CTSs not meeting the licensing criteria under paragraph (b) of this section are authorized under the 218–219 MHz Service system license.

(d) Each component response transmitter unit (RTU) in a 218–219 MHz Service system is authorized under the system license or if associated with an individually licensed CTS, under that CTS license.

(e) Each CTS (regardless of whether it is individually licensed) and each RTU must be in compliance with the Commission's environmental rules (*see* part 1, subpart I of this chapter) and the Commission's rules pertaining to the construction, marking and lighting of antenna structures (*see* part 17 of this chapter).

§ 27.1404 License application.

(a) In addition to the requirements of part 1, subpart F of this chapter, each application for a 218–219 MHz Service system license must include a plan analyzing the co- and adjacent channel interference potential of the proposed system, identifying methods being used to minimize this interference, and showing how the proposed system will meet the service requirements set forth in § 27.14. This plan must be updated to reflect changes to the 218–219 MHz Service system design or construction.

(b) In addition to the requirements of part 1, subpart F of this chapter, each request by a 218–219 MHz Service system licensee to add, delete, or modify technical information of an individually licensed cellular transmitter station (CTS) (*see* § 27.1403(b)) must include a description of the system after the proposed addition, deletion, or modifications, including the population in the service area, the number of component CTSs, and an explanation of how the system will satisfy the service requirements specified in § 27.14.

§ 27.1405 Competitive bidding proceedings.

(a) Mutually exclusive initial applications for 218–219 MHz Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

(b) Installment payments. Eligible Licensees that elect resumption pursuant to *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, FCC 99–239 (released September 10, 1999)* may continue to participate in the installment payment program. Eligible Licensees are those that were current in installment payments (*i.e.,* less than ninety days delinquent) as of March 16, 1998, or those that had properly filed grace period requests under the former installment payment rules. All unpaid interest from grant date through election date will be capitalized into the principal as of Election Day creating a new principal amount. Installment payments must be made on a quarterly basis. Installment payments will be calculated based on new principal amount as of Election Day and will fully amortize over the remaining term of the license. The interest rate will equal the rate for five-year U.S. Treasury obligations at the grant date.

(c) Installment payment provisions for partitioning and disaggregation—(1) Parties not qualified for installment payment plans.

(i) When a winning bidder (partitionor or disaggregator) that elected to pay for its license through an installment payment plan partitions its license or disaggregates spectrum to another party (partitionee or disaggregatee) that would not qualify for an installment payment plan, or elects not to pay for its share of the license through installment payments, the outstanding principal balance owed by the partitionor or disaggregator shall be apportioned according to § 1.2111(e)(3) of this chapter. The partitionor or disaggregator is responsible for accrued and unpaid interest through and including the consummation date.

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount of the outstanding principal balance on or before the consummation date. Failure to meet this condition will result in cancellation of the grant of the partial assignment application.

(iii) The partitionor or disaggregator shall be permitted to continue to pay its pro rata share of the outstanding balance and, if applicable, shall receive loan documents evidencing the partitioning and disaggregation. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

(iv) A default on the partitionor's or disaggregator's payment obligation will affect only the partitionor's or disaggregator's portion of the market.

(2) Parties qualified for installment payment plans.

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation.

(ii) Each party may be required, as a condition to approval of the partial assignment application, to execute loan documents agreeing to pay its pro rata portion of the outstanding principal balance due, as apportioned according to § 1.2111(e)(3) of this chapter, based upon the installment payment terms for which it qualifies under the rules. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in

the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for its portion of the partitioned market.

(iii) A default on an obligation will affect only that portion of the market area held by the defaulting party.

(d) Eligibility for small business provisions.

(1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed $15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed $3 million for the preceding three years.

(e) Bidding credits. A winning bidder that qualifies as a small business, as defined in this subsection, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in accordance with § 1.2110(f)(2)(i) of this chapter.

(f) Winning bidders in Auction No. 2, which took place on July 28–29, 1994, that, at the time of auction, met the qualifications under the Commission's rules then in effect, for small business status will receive a twenty-five percent bidding credit pursuant to *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, FCC 99–239 (released September 10, 1999).*

§ 27.1406 License transferability.

(a) A 218–219 MHz Service system license, together with all of its component cellular transmitter stations (CTS) licenses, may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in § 1.948 of this chapter. For licenses acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), designated entities must comply with §§ 1.2110 and 1.2111 of this chapter (*see* § 1.948(a)(3) of this chapter).

(b) If the transfer, assignment, sale, or gift of a license is approved, the new licensee is held to the construction requirements set forth in § 27.14.

§ 27.1407 Station identification.

No response transmitter unit or cellular transmitter station is required to transmit a station identification announcement.

§ 27.1408 Station inspection.

Upon request by an authorized Commission representative, the 218–219 MHz Service system licensee must make any component cellular transmitter station available for inspection.

§ 27.1409 Certification.

Each cellular transmitter station and response transmitter unit must be certificated for use in the 218–219 MHz Service in accordance with part 2, subpart J of this chapter.

§ 27.1410 Interference.

(a) When a 218–219 MHz Service system suffers harmful interference within its service area or causes harmful interference to another 218–219 MHz Service system, the licensees of both systems must cooperate and resolve the problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including, but not limited to, specifying the transmitter power, antenna height or area, duty cycle, or hours of operation for the stations concerned.

(b) The use of any frequency segment (or portion thereof) at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of a frequency segment (or portion thereof) specified for the 218–219 MHz Service system may be restricted as to specified geographical areas, maximum power, or other operating conditions.

(c) A 218–219 MHz Service licensee must provide a copy of the plan required by § 27.1404 (a) to every TV Channel 13 station whose Noise Limited Contour, as determined in § 73.622(e) of this chapter, overlaps the licensed service area for the 218–219 MHz Service system. The 218–219 MHz Service licensee must send the plan to the TV Channel 13 licensee(s) within 10 days from the date the 218–219 MHz Service submits the plan to the Commission, and the 218–219 MHz Service licensee must send updates to this plan to the TV Channel 13 licensee(s) within 10 days from the date that such updates are filed with the Commission pursuant to § 95.815 of this chapter.

(d) Each 218–219 MHz Service system licensee must provide upon request, and install free of charge, an interference reduction device to any household within a TV Channel 13 station Noise Limited Contour that experiences interference due to a component cellular transmitter station or response transmitter unit (RTU).

(e) Each 218–219 MHz Service system licensee must investigate and eliminate harmful interference to television broadcasting and reception, from its component CTSs and RTSs, within 30 days of the time it is notified in writing, by either an affected television station, an affected viewer, or the Commission, of an interference complaint. Should the licensee fail to eliminate the interference within the 30-day period, the CTS(s) or RTU(s) causing the problem(s) must discontinue operation.

(f) The boundary of the 218–219 MHz Service system, as defined in its authorization, is the limit of interference protection for that 218–219 MHz Service system.

13. Part 95 is revised as follows:

PART 95—Personal Radio Services

Subpart A—General Information

Sec.
95.1 Basis and Purpose.
95.3 Definitions.
95.5 License requirement and eligibility.
95.7 Authorized locations.
95.9 Licensee responsibility.
95.11 Station inspection.
95.13 Correspondence and notices from the FCC.
95.15 Penalties for violating the rules.
95.17 Contact the FCC.

Subpart B—Technical Information

95.31 Scope.
95.33 Equipment certification requirements.
95.35 Power.
95.37 Frequency tolerance.
95.39 Bandwidth limitations.
95.41 Unwanted emissions.
95.43 Modulation standards.
95.45 Antenna limits.
95.47 Telephone interconnection.
95.49 RF safety.

Subpart C—General Mobile Radio Service (GMRS)

95.101 Scope.
95.103 Channels available.
95.105 Permissible communications.

Subpart D—Radio Control (R/C) Radio Service

95.201 Scope.
95.203 Channels available.
95.207 Permissible communications.
95.209 Special restrictions on the location of R/C stations.
95.211 Operation by remote control.

Subpart E—Citizens Band (CB) Radio Service

95.301 Scope.
95.303 Am I eligible to operate a CB station?
95.305 Are there any special restrictions on the location of my CB station?
95.307 On what channels may I operate?
95.309 Do I have any antenna limitations?.
95.311 What equipment may I use at my CB station?

95.313 May I use power amplifiers?
95.315 What communications may be transmitted?
95.317 What communications are prohibited?
95.319 May I be paid to use my CB station?
95.321 Do I have to limit the length of my communications?
95.323 How do I use my CB station in an emergency or to assist a traveler?
95.325 May I operate my CB station transmitter by remote control?
95.327 May I connect my CB station transmitter to a telephone?

Subpart F—Family Radio Service (FRS)

95.401 Scope.
95.403 Channels available.
95.405 Permissible communications.

Subpart G—Low Power Radio Service (LPRS)

95.501 Scope.
95.503 Channels available.
95.505 Permissible communications.
95.507 Notification requirement.
95.509 Marketing limitations.

Subpart H—Wireless Medical Telemetry Service (WMTS)

95.601 Scope.
95.603 Channels available.
95.605 Permissible communications.
95.607 Frequency coordination.
95.609 Frequency coordinator.
95.611 Special requirements for operating in the 608–614 MHz band.
95.613 Special requirements for wireless medical telemetry devices operating in the 1395–1400 and 1427–1429.5 MHz bands.
95.615 Protection of medical equipment.

Subpart I—Medical Device Radiocommunications Service (MedRadio)

95.701 Scope.
95.703 Permissible communications.
95.705 Channel use policy.
95.707 Disclosure polices.
95.709 Labeling requirements.
95.711 Marketing limitations.
95.713 Certification procedures.
95.715 MedRadio transmitters.
95.717 Maximum transmitter power.
95.719 Emission types.
95.721 Emission bandwidth.
95.723 Unwanted radiation.
95.725 Antennas.
95.727 RF exposure.

Subpart J—Multi-Use Radio Service (MURS)

95.801 Scope.
95.803 Channels available.
95.805 Permissible communications.
95.807 Repeater operations and signal boosters prohibited.
95.809 Grandfathered MURS Stations.

Subpart K—Personal Locator Beacons (PLB)

95.901 Scope.
95.903 Channels available.
95.905 Permissible communications.
95.907 Special requirements for 406 MHz PLBs.
95.909 Marketing limitations.

Subpart L—Dedicated Short-range Communications Service On-Board Units (DSRCS–OBUs)

95.1001 Scope.
95.1003 ASTM E2213–03 DSRC Standard.
95.1005 Channel designations of frequencies available.

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

Subpart A—General Information

§ 95.1 Basis and purpose.

This section contains a concise general statement of the basis and purpose of the rules in this part, pursuant to 5 U.S.C. 553(c).

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et. seq.*

(b) *Purpose.* The purpose of these rules is to establish the requirements and conditions under which radio stations may be licensed and used in the Personal Radio Services.

§ 95.3 Definitions.

Antenna. The radiating system (for transmitting, receiving or both) and the structure holding it up (tower, pole or mast).

Authorized bandwidth. Maximum permissible bandwidth of a transmission.

Automated maritime telecommunications system (AMTS). An automatic maritime communications system administered under part 80 of the Commission's rules.

Base station. A fixed station that communicates with mobile stations.

Carrier power. Average transmitter output power during one RF cycle under condition of no modulation.

Channel center frequencies. Reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance.

Citizens Band (CB) Radio Service. The CB Radio Service is a private, two-way, short-distance voice communications service intended primarily for personal activities of the general public. The CB Radio Service may also be used for voice paging.

Citizens Band Radio Services. The Citizens Band Radio Services are the Citizens Band, Family Radio Service, Personal Locator Beacon, Low Power Radio Service, Medical Implant Communications Service, Multi-Use Radio Service, Wireless Medical Telemetry Service, and Dedicated Short-range Communications Service On-Board Units.

CB transmitter. A transmitter that operates or is intended to operate at a station authorized in the CB Radio Service.

Dedicated Short-range Communications Service On-Board Units (DSRCS–OBUs). DSRCS–OBUs may communicate with DSRCS Roadside Units (RSUs), which are authorized under part 90 of this chapter.

Family Radio Service (FRS). The FRS is a private, two-way, very short-distance voice and data communications service for facilitating family and group activities.

General Mobile Radio Service (GMRS). GMRS is a land mobile radio service available to persons for short-distance two-way communications intended primarily to facilitate personal communications.

Health care facility. A health care facility includes hospitals and other establishments that offer services, facilities and beds for use beyond a 24-hour period in rendering medical treatment, and institutions and organizations regularly engaged in providing medical services through clinics, public health facilities, and similar establishments, including government entities and agencies such as Veterans Administration hospitals; except the term health care facility does not include an ambulance or other moving vehicle.

Low Power Radio Service (LPRS). The LPRS is a private, short-distance communications service providing auditory assistance to persons with disabilities, persons who require language translations, and persons in educational settings, health care assistance to the ill, law enforcement tracking services in cooperation with law enforcement, and point-to-point network control communications for Automated Marine Telecommunications System (AMTS) coast stations licensed under part 80 of this chapter.

Mean power. Average transmitter output power over a time interval of at least 0.1 seconds.

Medical Device Radiocommunications Service (MedRadio). An ultra-low power radio service for the transmission of non-voice data for the purpose of facilitating diagnostic and/or therapeutic functions involving implanted and body-worn medical devices.

With regard to MedRadio, the following definitions apply:

(1) *EIRP.* Equivalent Isotropically Radiated Power. Antenna input power times gain for free-space or in-tissue measurement configurations required by MedRadio, expressed in watts, where the gain is referenced to an isotropic radiator.

(2) *Emission bandwidth.* Measured as the width of the signal between the points on either side of carrier center

frequency that are 20 dB down relative to the maximum level of the modulated carrier. Compliance will be determined using instrumentation employing a peak detector function and a resolution bandwidth approximately equal to 1% of the emission bandwidth of the device under test.

(3) *Medical body-worn device.* Apparatus that is placed on or in close proximity to the human body (*e.g.,* within a few centimeters) for the purpose of performing diagnostic or therapeutic functions.

(4) *Medical body-worn transmitter.* A MedRadio transmitter intended to be placed on or in close proximity to the human body (*e.g.,* within a few centimeters) used to facilitate communications with other medical communications devices for purposes of delivering medical therapy to a patient or collecting medical diagnostic information from a patient.

(5) *Medical implant device.* Apparatus that is placed inside the human body for the purpose of performing diagnostic and/or therapeutic functions.

(6) *Medical implant event.* An occurrence or the lack of an occurrence recognized by a medical implant device, or a duly authorized health care professional, that requires the transmission of data from a medical implant transmitter in order to protect the safety or well-being of the person in whom the medical implant transmitter has been implanted.

(7) *Medical implant transmitter.* A MedRadio transmitter in which both the antenna and transmitter device are designed to operate within a human body for the purpose if facilitating communications from a medical implant device.

(8) *MedRadio channel.* Any continuous segment of spectrum that is equal to the emission bandwidth of the device with the largest bandwidth that is to participate in a MedRadio communications session. (**Note:** The rules do not specify a channeling scheme for use by MedRadio systems.)

(9) *MedRadio communications session.* A collection of transmissions, that may or may not be continuous, between MedRadio system devices.

(10) *Medical implant transmitter.* A transmitter authorized to operate in the MedRadio service.

(11) *MedRadio programmer/control transmitter.* A MedRadio transmitter that operates or is designed to operate outside of a human body for the purpose of communicating with a receiver, or for triggering a transmitter, connected to a medical implant device or to a medical body-worn device used in the MedRadio Service; and which also typically includes a frequency monitoring system that initiates a MedRadio communications session.

(12) *MedRadio Service.* Medical Device Radiocommunication Service.

(13) *Multi-Use Radio Service (MURS).* MURS is a private, two-way, short-distance voice, data or image communications service for personal or business activities of the general public.

(14) *Personal Locator Beacon (PLB).* PLBs are intended to provide individuals in remote areas a means to alert others of an emergency situation and to aid search and rescue personnel to locate those in distress.

(15) *Radio Control (R/C) Radio Service.* The R/C Service is a private, one-way, short-distance non-voice communications service for the operation of devices at remote locations.

(16) *R/C transmitter.* A transmitter that operates or is intended to operate at a station authorized in the R/C.

(17) *Wireless medical telemetry.* The measurement and recording of physiological parameters and other patient-related information via radiated bi- or unidirectional electromagnetic signals in the 608–614 MHz, 1395–1400 MHz, and 1427–1429.5 MHz frequency bands.

(18) *Wireless Medical Telemetry Service (WMTS).* The WMTS is a private, short-distance data communication service for the transmission of patient medical information to a central monitoring location in a hospital or other hospital care facility.

§ 95.5 License requirement and eligibility.

Except as set forth in paragraphs (a) through (d), you are authorized by rule (no individual FCC license is required) to operate Personal Radio Service transmitters that have been approved as required in § 95.33.

(a) Stations belonging to and operated by the United States Government, and stations operated by foreign governments or their representatives are not authorized.

(b) Each entity operating a LPRS transmitter for AMTS purposes must hold an AMTS license under part 80 of this chapter.

(c) Authorized health care providers are authorized by rule to operate transmitters in the Wireless Medical Telemetry Service without an individual license issued by the Commission provided the coordination requirements in § 95.607 have been met. Manufacturers of wireless medical telemetry devices and their representatives are authorized to operate wireless medical telemetry transmitters in this service solely for the purpose of demonstrating such equipment to, or installing and maintaining such equipment for, duly authorized health care providers. No entity that is a foreign government or which is active in the capacity as a representative of a foreign government is eligible to operate a WMTS transmitter.

(d) Operation in the MedRadio service is permitted by rule and without an individual license issued by the FCC. Duly authorized health care professionals are permitted to operate MedRadio transmitters. Persons may also operate MedRadio transmitters to the extent the transmitters are incorporated into implanted or body-worn medical devices that are used by the person at the direction of a duly authorized health care professional; this includes medical devices that have been implanted in that person or placed on the body of that person by or under the direction of a duly authorized health care professional. Manufacturers of medical devices that include MedRadio transmitters, and their representatives, are authorized to operate transmitters in this service for the purpose of demonstrating such equipment to duly authorized health care professionals. No entity that is a foreign government or which is acting in its capacity as a representative of a foreign government is eligible to operate a MedRadio transmitter. The term "duly authorized health care professional" means a physician or other individual authorized under state or federal law to provide health care services. Operations that comply with the requirements of this part may be conducted under manual or automatic control.

§ 95.7 Authorized locations.

(a) Provided that you comply with the rules of this chapter, you are authorized to operate a Personal Radio Services transmitter from:

(1) Within the United States and its territories. Those areas include the fifty United States and the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands (50 islets and cays), American Samoa (seven islands), the Commonwealth of Northern Marianna Islands, and Guam Island;

(2) Aboard any vessel or aircraft registered in the United States, with the permission of the captain, that is within or over the United States or its territories, U.S. territorial waters, or upon or over international waters; or

(3) Aboard any unregistered vessel or aircraft owned or operated by a United States citizen or company that is within or over the United States or its

territories, U.S. territorial waters or upon or over international waters.

(b) You may be subject to additional restrictions if you operate your Personal Radio Services transmitter:

(1) Near an FCC field office or in a quiet zone. *See* § 1.924 of this chapter.

(2) In an area subject to an international treaty or agreement.

(3) At an environmentally sensitive site, or in such a manner as to raise environmental problems. *See* §§ 1.1307, 1.1311 and 1.1312 of this chapter.

(4) In an area administered by the United States Government. For example, the Department of Defense may impose restrictions on a station transmitting on its land. Before placing a station at such a point, a licensee should consult with the commanding officer in charge of the land. Anyone intending to operate a Personal Radio Services transmitter on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should send an e-mail to: *prcz@naic.edu.*

(i) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the unit. The notification shall state the geographical coordinates of the unit.

(ii) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

(c) Wireless Medical Telemetry Service devices shall not operate in mobile vehicles, such as ambulances, even if those vehicles are associated with a health care facility.

§ 95.9 Licensee responsibility.

(a) A licensee (including entities licensed by rule) of a Personal Radio Services transmitter is responsible at all times for the proper operation of the transmitter. Licensees must at all times and on all channels give priority to emergency communications.

(b) You must not use a Personal Radio Service station:

(1) In connection with any activity which is against federal, state or local law;

(2) For the transmission of advertisements or program material associated with television or radio broadcasting;

(3) To intentionally interfere with another station's transmissions;

(4) To transmit sound effects (music, whistling, etc.) or obscene, profane or indecent words, language or meaning; or

(5) To transmit messages for hire or provide a common carrier service;

(6) Additional service-specific prohibitions are set forth in the relevant subparts of this chapter.

§ 95.11 Station inspection.

(a) If an authorized FCC representative requests to inspect your Personal Radio Services station, you must make your station and records available for inspection.

(b) A Personal Radio Service station includes all of the radio equipment you use in connection with that station.

(c) Your station records include the following documents, as applicable:

(1) A copy of each response to an FCC violation notice or an FCC letter.

(2) Each written permission received from the FCC.

§ 95.13 Correspondence and notices from the FCC.

(a) If the FCC sends you a letter asking you questions about your Personal Radio Service radio station or its operation:

(1) You must answer each of the questions with a complete written statement within the time period stated in the letter;

(2) You must not shorten your answer by references to other communications or notices;

(3) You must send your answer to the FCC office which sent you the notice; and

(4) You must keep a copy of your answer in your station records.

(b) If it appears to the FCC that you have violated the Communications Act or these rules, the FCC may send you an official notice concerning the violation.

(1) Within the time period stated in the notice, you must send your answer to the FCC office which sent you the notice and you must answer with:

(i) A complete written statement which fully explains each violation;

(ii) A complete written statement about any action you have taken to correct the violation and to prevent it from happening again; and

(iii) The name of the person operating the station at the time of the violation.

(2) If the FCC informs you that your Personal Radio Service station is causing interference for technical reasons, you must follow all instructions in the official notice. (This notice may require you to have technical adjustments made to your equipment.)

(3) You must comply with any restricted hours of station operation which may be included in the official notice.

(4) You must keep a copy of your answer in your station records.

§ 95.15 Penalties for violating the rules.

(a) If the FCC finds that you have willfully or repeatedly violated the Communications Act or the Commission's rules, you may have to pay as much as $16,000 for each violation, up to a total of $112,500. (*See* § 1.80 of this chapter.)

(b) If the FCC finds that you have violated any section of the Communications Act or the Commission's rules, you may be ordered to stop whatever action caused the violation. (*See* section 312(b) of the Communications Act.)

(c) If a federal court finds that you have willfully and knowingly violated any Commission rules, you may be fined up to $500 for each day you committed the violation. (*See* section 502 of the Communications Act.)

(d) If a federal court finds that you have willfully and knowingly violated any provision of the Communications Act, you may be fined up to $10,000 or you may be imprisoned for one year, or both. (*See* section 501 of the Communications Act.)

§ 95.17 Contact the FCC.

You may contact the FCC in any of the following ways:

(a) FCC National Call Center at 1–888–225–5322, TTY 1–888–835–5322;

(b) FCC World Wide Web homepage: *http://www.fcc.gov;* or

(c) In writing, to FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245, Attention: Personal Radio Services.

Subpart B—Technical Information

§ 95.31 Scope.

This subpart covers technical standards pertaining to transmitters used or intended to be used in all the part 95 Personal Radio Services.

§ 95.33 Equipment certification requirements.

(a) *General equipment certification requirement.* Except as provided below a Personal Radio Services transmitter must be certified to operate in the radio service in which it is intended to be

used. Any entity may request certification for its transmitter when the transmitter is used in the Personal Radio Services following the procedures in part 2 of this chapter.

(b) *Non-certified transmitters.*

(1) Non-certified R/C transmitters may be used in the R/C Service if they only operate in the 26.995–27.255 MHz band and comply with the part 95 technical standards.

(2) Non-certified medical implant or medical body-worn transmitters that are not marketed for use in the United States, but which otherwise comply with the MedRadio technical requirements, may be used by individuals who have traveled to the United States.

(c) *Modification of certified equipment.* Only the holder of the equipment certification may make modifications to the design of a certificated Personal Radio Services transmitter, and then only pursuant to and in full compliance with the requirements and procedures in part 2 of this chapter. *See* §§ 2.932 and 2.1043 of this chapter.

(1) No person shall make any modification to any certificated Personal Radio Services transmitter that changes or affects the technical operation of that transmitter, including any modification to provide for additional transmitting frequencies, increased modulation level, a different form of modulation, or increased transmitter output power (either mean power or peak envelope power or both). Any such modification would void the certified status of that transmitter and render it unacceptable for use in the Personal Radio Services, pursuant to paragraph (a) of this section.

(2) No person shall willfully and knowingly use any Personal Radio transmitter which has been modified in violation of paragraph (c)(1) of this section.

(d) *Limitations.* No external device or accessory may be added on to a personal radio transmitter that can result in a violation of the rules.

(1) No control, switch or other type of adjustment which, when manipulated, can result in a violation of the rules shall be accessible to the user.

(2) No Personal Radio Services transmitter shall incorporate provisions for increasing its transmitter power to any level in excess of the maximum power permitted under the rules.

(3) No transmitter will be certified for use in a Personal Radio Service if the radio has the capability to operate on frequencies in a licensed or safety service (frequencies externally accessible). Safety service refers to communications involving the safety of life, property or health.

(e) *Specific equipment certification requirements.*

(1) GMRS, CB, FRS and MURS transmitters may transmit tones to make contact or to continue communications with a particular transmitter. If the tone is audible (more than 300 Hertz), it must last no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking.

(2) FRS and GMRS units may transmit digital data containing location information, or requesting location information from one or more other units within that service, or containing a brief text message to another specific unit or units. Digital data transmissions must be initiated by a manual action or command of a user, except that an FRS or GMRS unit receiving an interrogation request may automatically respond with its location. Digital data transmissions shall not exceed one second, and shall be limited to no more than one digital transmission within a thirty-second period, except that a unit may automatically respond to more than one interrogation request received within a thirty-second period.

(3) Applications for certification of GMRS transmitters received on or after [EFFECTIVE DATE OF THE FINAL RULE] will be granted only for equipment with a 12.5 kHz bandwidth.

(4) GMRS transmitters that are designed with a maximum channel bandwidth greater than 12.5 kHz shall not be manufactured in, imported into or marketed in the United States after a specified date to be determined in WT Docket 10–119.

(5) FRS units are prohibited from transmitting data in store-and-forward packet operation mode.

(6) An R/C transmitter which incorporates plug-in frequency determining modules which are changed by the user must be certificated with the modules. Each module must contain all of the frequency determining circuitry including the oscillator. Plug-in crystals are not considered modules and must not be accessible to the user.

(7) No transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in § 95.307, unless such transmitter is also certificated for use in another radio service for which the frequency capability is authorized and for which certification is also required (transmitters with frequency capability for the Amateur Radio Services and Military Affiliate Radio System will not be certificated).

(8) No transmitter will be certificated for use in the GMRS if it is equipped with a frequency capability not listed in § 95.103, unless such transmitter is also certificated for use in another radio service for which the frequency capability is authorized and for which certification is also required (transmitters with frequency capability for the Amateur Radio Services and Military Affiliate Radio System will not be certificated).

(9) All frequency determining circuitry (including crystals) and programming controls in each CB transmitter and in each GMRS transmitter must be internal to the transmitter and must not be accessible from the exterior of the transmitter operating panel or from the exterior of the transmitter enclosure.

(10) No add-on device, whether internal or external, the function of which is to extend the transmitting frequency capability of a CB transmitter beyond its original capability, shall be manufactured, sold or attached to any CB station transmitter.

(11) No transmitter will be certificated for use in MURS if it is equipped with a frequency capability not listed in § 95.803.

(f) Enclosures, Instruction Manuals, Disclosures.

(1) A user's instruction manual must be supplied with each Personal Radio Service transmitter marketed. *See* § 2.1033 of this chapter.

(2) The instruction manual must contain all information necessary for the proper installation and operation of the transmitter including:

(i) Instructions concerning all controls, adjustments and switches that may be operated or adjusted without resulting in a violation of the rule and;

(ii) Warnings concerning any adjustment that could result in a violation of the rules or that is recommended to be performed by or under the immediate supervision and responsibility of a person certified as technically qualified to perform transmitter maintenance and repair duties in the private land mobile services and fixed services by an organization or committee representative of users of those services.

(iii) Manufacturers of LPRS transmitters used for auditory assistance, health care assistance, and law enforcement tracking purposes must include with each transmitting device the following statement: "This transmitter is authorized by rule under the Low Power Radio Service (47 CFR part 95) and must not cause harmful interference to TV reception or to the United States Air Force Space

Surveillance System operating in the 216.88–217.08 MHz band. You do not need an FCC license to operate this transmitter. This transmitter may only be used to provide: Auditory assistance to persons with disabilities, persons who require language translation, or persons in educational settings; health care services to the ill; law enforcement tracking services under agreement with a law enforcement agency; or automated maritime telecommunications system (AMTS) network control communications. Two-way voice communications and all other types of uses not mentioned above are expressly prohibited."

(iv) Prior to operating a LPRS transmitter for AMTS purposes, an AMTS licensee must notify, in writing, each television station that may be affected by such operations, as defined in § 80.215(h) of this chapter. The notification provided with the station's license application is sufficient to satisfy this requirement if no new television stations would be affected.

(g) Labeling requirements.

(1) Each LPRS transmitting device shall bear the following statement in a conspicuous location on the device: "This device may not interfere with TV reception or Federal Government radar."

(i) Where LPRS device is constructed in two or more sections connected by wire and marketed together, the statement specified in this section is required to be affixed only to the main control unit.

(ii) When the LPRS device is so small or for such use that it is not practicable to place the statement specified in the section on it, the statement must be placed in a prominent location in the instruction manual or pamphlet supplied to the user or, alternatively, shall be placed on the container in which the device is marketed.

(2) Additional information regarding certification and labeling of PLBs is set forth in § 95.907.

(3) WMTS. Each device shall be labeled with the following statement: "Operation of this equipment requires the prior coordination with a frequency coordinator designated by the FCC for the Wireless Medical Telemetry Service."

§ 95.35 Power.

(a) Use of a transmitter which has power (power output, EIRP, field strength, carrier or peak envelope power) in excess of that specified below voids your authority to operate the station.

(b) *GMRS.*

(1) Except as provided for in paragraph (2) of this section, the maximum power permitted is as follows:

(i) GMRS base stations—50 watts output power;

(ii) GMRS small base stations (operating on even numbered GMRS channels)—5 watts output power;

(iii) GMRS fixed stations—15 watts output power;

(iv) GMRS mobile stations (except portable/handheld units)—50 watts output power; and

(v) GMRS portable/handheld units—2 watts ERP.

(2) Any GMRS station located at a point north of Line A or east of Line C must transmit with no more than 5 watts ERP.

(c) *R/C.* Your R/C station transmitter power output must not exceed the following value under any conditions:

Channel (MHz)	Transmitter power (carrier power) watts
27.255	25
26.995–27.195	4
72–76	0.75

(d) *CB.* Your CB station transmitter power output must not exceed the following values under any conditions: AM (A3)—4 watts (carrier power) SSB—12 watts (peak envelope power).

(e) *FRS.* Regardless of modulation, the power shall not exceed 0.5 watts ERP.

(f) *LPRS.* The maximum allowable ERP for a station in the LPRS other than an AMTS station is 100 mW. The maximum allowable ERP for an AMTS station in the LPRS is 1 W, so long as emissions are attenuated, in accordance with § 80.211 of this chapter, at the band edges.

(g) *WMTS.* The maximum field strength authorized for WMTS stations in the 608–614 MHz band is 200 mV/m, measured at 3 meters using measuring instrumentation with a CISPR quasi-peak detector. For stations in the 1395–1400 MHz and 1427–1429.5 MHz bands, the maximum field strength is 740 mV/m, measured at 3 meters using measuring equipment with an averaging detection and a 1 MHz measurement bandwidth.

(h) *MURS.* Regardless of modulation, the power shall not exceed 2 watts ERP.

(i) *PLB. See* § 95.907.

(j) *DSRCS–OBU.* DSRCS–OBUs are governed under subpart L of this part, except the maximum output power for portable DSRCS–OBUs is 1.0 mW. For purposes of this paragraph, a portable is a transmitting device designed to be used so that the radiating structure(s) of the device is/are within 20 centimeters of the body of the user.

§ 95.37 Frequency tolerance.

(a) *GMRS.* Each GMRS transmitter for mobile station, small base station and control station operation must be maintained within a frequency tolerance of 5 parts-per-million. Each GMRS transmitter for base station (except small base), mobile relay station or fixed station operation must be maintained within a frequency tolerance of 2.5 parts-per-million.

(b) *R/C.*

(1) Each R/C transmitter that transmits in the 26–27 MHz frequency band with a mean transmitter power of 2.5 W or less and that is used solely by the operator to turn on and/or off a device at a remote location, other than a device used solely to attract attention, must be maintained within a frequency tolerance of 100 parts-per-million.

(2) All other R/C transmitters that transmit in the 26–27 MHz frequency band must be maintained within a frequency tolerance of 5 parts-per-million.

(3) Except as noted in paragraph (b)(4) of this section, R/C transmitters capable of operation in the 72–76 MHz band must be maintained within a frequency tolerance of 50 parts-per-million.

(4) All R/C transmitters capable of operation in the 72–76 MHz band that are manufactured in or imported into the United States, on or after March 1, 1992, or are marketed on or after March 1, 1993, must be maintained within a frequency tolerance of 20 parts-per-million.

(c) *CB.* Each CB transmitter must be maintained within a frequency tolerance of 50 parts-per-million.

(d) *FRS.* Each FRS transmitter must be maintained within a frequency tolerance of 2.5 parts-per-million.

(e) *LPRS.* LPRS transmitters operating on standard band (25 kHz) channels or extra band (50 kHz) channels must be maintained within a frequency stability of 50 parts-per-million. LPRS transmitters operating on narrowband (5 kHz) channels must be maintained within a frequency stability of 1.5 parts-per-million.

(f) *WMTS.* Manufacturers of wireless medical telemetry devices are responsible for ensuring frequency stability such that an emission is maintained within the band of operation under all of the manufacturer's specified conditions.

(g) *MURS.* Each MURS transmitter must maintain a frequency tolerance of 5 parts-per-million, or 2 parts-per-million if designed to operate with a 6.25 kHz bandwidth.

(h) *PLB. See* § 95.907.

§ 95.39 Bandwidth limitations.

(a) *Authorized bandwidths (except as noted below).* The authorized bandwidth (maximum permissible bandwidth of a transmission) for emission type H1D, J1D, R1D, H3E, J3E or R3E is 4 kHz. The authorized bandwidth for emission type A1D or A3E is 8 kHz. The authorized bandwidth for emission type F1D, G1D, F3E or G3E is 20 kHz.

(b) *R/C bandwidths.* The authorized bandwidth for any emission type transmitted by an R/C transmitter is 8 kHz.

(c) *FRS bandwidths.* The authorized bandwidth for emission type F3E or F2D transmitted by a FRS unit is 12.25 kHz. Additional bandwidths for FRS are listed in paragraph (a) of this section.

(d) *LPRS bandwidths:*

(1) The authorized bandwidth for narrowband frequencies is 4 kHz and the channel bandwidth is 5 kHz.

(2) The channel bandwidth for standard band frequencies is 25 kHz.

(3) The channel bandwidth for extra band frequencies is 50 kHz.

(4) AMTS stations may use the 216.750–217.000 MHz band as a single 250 kHz channel so long as the signal is attenuated as specified in § 95.41.

(e) *MURS bandwidths:*

(1) Emissions on frequencies 151.820 MHz, 151.880 MHz, and 151.940 MHz are limited to 11.25 kHz.

(2) Emissions on frequencies 154.570 and 154.600 MHz are limited to 20.0 kHz.

(3) Provided, however, that all A3E emissions are limited to 8 kHz.

(f) DSRCS–OBUs are governed under subpart L of this part.

§ 95.41 Unwanted emissions.

The requirements in this section apply to each transmitter both with and without the connection of permitted attachments, such as an external speaker, microphone, power cord and/or antenna.

(a) *Emission masks.* Emission masks applicable to transmitting equipment in the Personal Radio Services are defined by the requirements in the following table. The numbers in the attenuation requirements column refer to rule paragraph numbers under paragraph (b) of this section.

Radio service (conditions)	Emission types filter	Attenuation requirements
GMRS	A1D, A3E, F1D, G1D, F3E, G3E With audio filter	(1), (3), (7)
GMRS	A1D, A3E, F1D, G1D, F3E, G3E without audio filter	(5), (6), (7)
GMRS	H1D, J1D, R1D, H3E, J3E, R3E	(2), (4), (7)
FRS	F2D, F3E with filter	(1), (3), (7)
R/C (27 MHz)	Any permitted emission	(1), (3), (7)
R/C (72–76 MHz)	Any permitted emission	(1), (10), (11), (12)
CB	A1D, A3E	(1), (3), (8), (9)
CB	H1D, J1D, R1D, H3E, J3E, R3E	(2), (4), (8), (9)
MURS (151.820, 151.880, 151.940 MHz)	Any permitted emission type	(21), (22)
MURS (154.570 & 154.600 MHz)	Any permitted emission type, with filter	(1), (3), (7)
MURS (154.570 & 154.600 MHz)	Any permitted emission type, without filter	(5), (23), (7)
LPRS (narrow 5 kHz)	Any permitted emission type	(13), (14)
LPRS (standard 25 kHz)	Any permitted emission type	(15), (16)
LPRS (extra 50 kHz)	Any permitted emission type	(17), (18)
LPRS (AMTS 250 kHz)	Any permitted emission type	(19), (20)
MedRadio (402–405 MHz)	Any permitted emission type	(24), (25)
MedRadio (401–402 MHz and 405–406 MHz)	Any permitted emission type	(26), (27)

Note 1: Filtering noted for GMRS and FRS transmitters refers to the requirement in § 95.43.

Note 2: Unwanted emission power may be measured as either mean power or peak envelope power, provided that the transmitter output power is measured the same way.

Note 3: Compliance with the attenuation requirements in paragraphs (b)(24) through (b)(27) of this section is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(b) *Attenuation requirements.* The power of unwanted emissions must be attenuated below the transmitter output power in Watts (P) by at least:

(1) 25 dB (decibels) on any frequency removed from the center of the authorized bandwidth by more than 50% up to and including 100% of the authorized bandwidth.

(2) 25 dB on any frequency removed from the center of the authorized bandwidth by more than 50% up to and including 150% of the authorized bandwidth.

(3) 35 dB on any frequency removed from the center of the authorized bandwidth by more than 100% up to and including 250% of the authorized bandwidth.

(4) 35 dB on any frequency removed from the center of the authorized bandwidth by more than 150% up to and including 250% of the authorized bandwidth.

(5) 83 log (f_d/5) dB on any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to and including 10 kHz.

(6) 116 log (f_d/6.1) dB, or if less, 50 + 10 log (P) dB, on any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz), of more than 10 kHz up to and including 250% of the authorized bandwidth.

(7) 43 + 10 log (P) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(8) 53 + 10 log (P) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(9) 60 dB on any frequency twice or greater than twice the fundamental frequency.

(10) 45 dB on any frequency removed from the center of the authorized bandwidth by more than 100% up to and including 125% of the authorized bandwidth.

(11) 55 dB on any frequency removed from the center of the authorized bandwidth by more than 125% up to and including 250% of the authorized bandwidth.

(12) 56 + 10 log (P) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(13) 30 + 20(f_d − 2) dB, or 55 + 10 log (P) dB, or 65 dB, whichever is least, on any frequency removed from the center

of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 2 kHz up to and including 3.75 kHz.

(14) 55 + 10 log (P) dB on any frequency removed from the center of the authorized bandwidth by more than 3.75 kHz.

(15) 30 dB on any frequency removed from the channel center frequency by 12.5 kHz to 22.5 kHz.

(16) 43 + 10 log (P) dB on any frequency removed from the channel center frequency by more than 22.5 kHz.

(17) 30 dB on any frequency removed from the channel center frequency by 25 kHz to 35 kHz.

(18) 43 + 10 log (P) dB on any frequency removed from the channel center frequency by more than 35 kHz.

(19) 30 dB on any frequency removed from the channel center frequency by 125 kHz to 135 kHz.

(20) 43 + 10 log (P) dB on any frequency removed from the channel center frequency by more than 135 kHz.

(21) $7.27(f_d - 2.88$ kHz) dB on any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5.625 kHz but no more than 12.5 kHz.

(22) 50 + 10 log (P) dB or 70 dB, whichever is the lesser attenuation, on any frequency removed from the center of the authorized bandwidth by more than 12.5 kHz.

(23) 29 log ($f_d^2 \div 11$) dB or 50 dB, whichever is the lesser attenuation on any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz, but not more than 250 percent of the authorized bandwidth.

(24) 20 dB, on any frequency within the 402–405 MHz MedRadio band that is more than 150 kHz away from the center frequency of the spectrum the transmission is intended to occupy.

(25) 20 dB, on any frequency between 401.750 MHz and 402.000 MHz, and on any frequency between 405 MHz and 405.250 MHz.

(26) 20 dB, on any frequency within the 401–402 MHz or 405–406 MHz MedRadio bands that is more than 50 kHz away from the center frequency of the spectrum the transmission is intended to occupy.

(27) 20 dB, on any frequency between 400.900 MHz and 401.000 MHz, and on any frequency between 406.000 MHz and 406.100 MHz.

(c) *Field strength limits for the WMTS.* The following field strength limits apply to WMTS transmitters.

(1) For WMTS transmitters, unwanted emissions on frequencies below 960 MHz are limited to 200 μV/m, measured at a distance of 3 meters using measuring instrumentation with a CISPR quasi-peak detector.

(2) For WMTS transmitters, unwanted emissions on frequencies above 960 MHz are limited to 500 μV/m, measured at a distance of 3 meters using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

(d) *Field strength limits for the MedRadio service.* The field strength limits in the table in this paragraph apply to medical device transmitters, subject to the provisions in paragraphs (d)(1) through (d)(4) of this section.

Frequency (MHz)	Field strength (μV/m)	Measurement distance (m)
30–88	100	3
88–216	150	3
216–960	200	3
960 and above	500	3

Note: At band edges, the tighter limit applies.

(1) For medical device transmitters operating in the 402–405 MHz MedRadio band, emissions on frequencies below 401.750 MHz or above 405.250 MHz must not exceed the field strength limits in the table in paragraph (d) of this section.

(2) For medical device transmitters operating in the 401–402 MHz or 405–406 MHz MedRadio bands, emissions on frequencies below 400.900 MHz or above 406.000 MHz must not exceed the field strength limits in the table in paragraph (d) of this section.

(3) Compliance with the field strength limits shown in the table in paragraph (d) of this section is based on the use of measurement instrumentation employing a CISPR quasi-peak detector, except that, for emissions on frequencies above 1 GHz, compliance is based on the use of measurement instrumentation employing an average detector. For measurements of emissions on frequencies above 1 GHz, a minimum resolution bandwidth of 1 MHz must be used.

(4) The emissions from a medical device transmitter must be measured to at least the tenth harmonic of the highest fundamental frequency designed to be emitted by the transmitter.

(e) *Harmful interference.* If harmonic or other spurious emissions result in harmful interference, the FCC may require appropriate technical changes in the station equipment to alleviate the interference, including the use of a low pass filter between the transmitter antenna terminals and the antenna feed line.

§ 95.43 Modulation standards.

(a) A GMRS transmitter that transmits emission types F1D, G1D, or G3E must not exceed a peak frequency deviation of plus or minus 5 kHz. A GMRS transmitter that transmits emission type F3E must not exceed a peak frequency deviation of plus or minus 5 kHz. A FRS unit that transmits emission type F3E must not exceed a peak frequency deviation of plus or minus 2.5 kHz, and the audio frequency response must not exceed 3.125 kHz.

(b) Each GMRS transmitter, except a mobile station transmitter with a power output of 2.5 W or less, must automatically prevent a greater than normal audio level from causing overmodulation. The transmitter also must include audio frequency low pass filtering, unless it complies with the applicable paragraphs of § 95.41 (without filtering). The filter must be between the modulation limiter and the modulated stage of the transmitter. At any frequency (f in kHz) between 3 and 20 kHz, the filter must have an attenuation of at least 60 $\log_{10}$ (f/3) dB greater than the attenuation at 1 kHz. Above 20 kHz, it must have an attenuation of at least 50 dB greater than the attenuation at 1 kHz.

(c) When emission type A3E is transmitted, the modulation must be greater than 85% but must not exceed 100%. Simultaneous amplitude modulation and frequency or phase modulation of a transmitter are not permitted.

(d) When emission type A3E is transmitted by a CB transmitter having a transmitter output power of greater than 2.5 W, the CB transmitter must automatically prevent the modulation from exceeding 100%.

(e) Each CB transmitter that transmits emission type H3E, J3E or R3E must be capable of transmitting the upper sideband. The capability of also transmitting the lower sideband is permitted.

(f) DSRCS–OBUs are governed under subpart L of this part.

§ 95.45 Antenna limits.

(a) *GMRS.*

(1) Certain antenna structures used in a GMRS system and that are more than 60.96 m (200 ft) in height, or are located near or at a public-use airport, must be notified to the FAA and registered with the Commission as required by part 17 of this chapter.

(2) The antenna for a small base or control station must not be more than 6.1 meters (20 feet) above the ground or

above the building or tree on which it is mounted. Each base station and each control station with an antenna height greater than 6.1 meters (20 feet) must be separately identified on Form 605.

(3) Any GMRS station licensed after [EFFECTIVE DATE OF THE FINAL RULE] and located north of Line A or east of Line C must have an antenna no more than 20 feet above ground or above the building or tree on which it is mounted.

(4) The antenna of handheld portable GRMS units must be an integral part of the transmitter. The antenna must have no gain (as compared to a half-wave dipole) and must be vertically polarized.

(b) *R/C.*

(1) The antenna of each R/C station transmitting in the 72–76 MHz band must be an integral part of the transmitter. The antenna must have no gain (as compared to a half-wave dipole) and must be vertically polarized.

(2) For 27 MHz operation, if your antenna is mounted on a hand-held portable unit, none of the following limitations in paragraph (3) of this section apply.

(3) For 27 MHz operation, if your antenna is installed at a fixed location, it (whether receiving, transmitting or both) then the highest point must not be more than 6.10 meters (20 feet) higher than the highest point of the building or tree on which it is mounted; or 18.3 meters (60 feet) above the ground.

(4) If your R/C station is located near an airport, and if your antenna structure is more than 6.10 meters (20 feet) high, you may have to obey additional restrictions. The highest point of your antenna must not exceed one meter above the airport elevation for every hundred meters of distance from the nearest point of the nearest airport runway. Differences in ground elevation between your antenna and the airport runway may complicate this formula. If your R/C station is near an airport, you may contact the nearest FCC field office for a worksheet to help you figure the maximum allowable height of your antenna. Consult part 17 of the Commission's rules for more information.

(c) *CB.*

(1) If your antenna is mounted on a hand-held portable unit, none of the limitations in paragraph (c)(2) of this section apply.

(2) If your antenna is installed at a fixed location, it (whether receiving, transmitting or both), then the highest point must not be more than 6.10 meters (20 feet) higher than the highest point of the building or tree on which it is mounted or 18.3 meters (60 feet) above the ground.

(3) If your CB station is located near an airport, and if your antenna structure is more than 6.1 meters (20 feet) high, you may have to obey additional restrictions. The highest point of your antenna must not exceed one meter above the airport elevation for every hundred meters of distance from the nearest point of the nearest airport runway. Differences in ground elevation between your antenna and the airport runway may complicate this formula. If your CB station is near an airport, you may contact the nearest FCC field office for a worksheet to help you figure the maximum allowable height of your antenna. Consult part 17 of the Commission's rules for more information.

(d) *FRS.* The antenna of each FRS transmitter band must be an integral part of the transmitter. The antenna must have no gain (as compared to a half-wave dipole) and must be vertically polarized.

(e) *LPRS:*

(1) AMTS stations must employ directional antennas.

(2) Antennas used with LPRS units must comply with the following:

(i) For LPRS units operating entirely within an enclosed structure, *e.g.,* a building, there is no limit on antenna height;

(ii) For LPRS units not operating entirely within an enclosed structure, the tip of the antenna shall not exceed 30.5 meters (100 feet) above ground. In cases where harmful interference occurs the FCC may require that the antenna height be reduced; and

(iii) The height limitation in paragraph (e)(2) of this section does not apply to LPRS units in which the antenna is an integral part of the unit.

(f) *MURS.* The highest point of any MURS antenna must not be more than 18.3 meters (60 feet) above the ground or 6.10 meters (20 feet) above the highest point of the structure on which it is mounted.

§ 95.47 Telephone interconnection.

(a) Excepted as noted in paragraph (b) of this section, no station in the Personal Radio Services may be interconnected with the public switched network.

(b) Interconnection Defined. Connection through automatic or manual means of radio stations with the facilities of the public switched telephone network to permit the transmission of messages or signals between points in the wireline or radio network of a public telephone company and persons served by radio stations. Wireline or radio circuits or links furnished by common carriers, which are used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or as an integral part of an authorized, private, internal system of communication or as an integral part of dispatch point circuits in a radio station are not considered to be interconnection for purposes of this rule part.

§ 95.49 RF safety.

Portable devices as defined in § 2.1093(b) of this chapter operating in the General Mobile Radio Service (GMRS), the Wireless Medical Telemetry Service (WMTS) and the Medical Device Radiocommunication Service (MedRadio) part 95 subparts C, H and I of this chapter are subject to radio frequency radiation exposure requirements as specified in §§ 1.1307(b) and 2.1093 of this chapter. Applications for equipment authorization for these devices must contain a statement confirming compliance with these requirements. Technical information showing the basis for this statement must be submitted to the Commission upon request.

Subpart C—General Mobile Radio Service (GMRS)

§ 95.101 Scope.

This subpart contains the operating requirements for GMRS. General and technical information pertaining to this service is contained in subparts A and B of this part.

§ 95.103 Channels available.

(a) GMRS channels listed below in this section are available to GMRS licensees only on a shared basis and will not be assigned for the exclusive use of any licensee. All GMRS licensees must cooperate in the selection and use of channels, including limiting communications to the minimum practical time, to reduce interference and to make the most effective use of the facilities.

Channel No.	Center frequency (MHz)	Station class	Channel No.	Center frequency (MHz)	Station class
1	462.5500	Base or mobile	16	467.5500	Mobile.[1]
2	462.5625	Sm Base or mobile[2]	17		
3	462.5750	Base or mobile	18	467.5750	Mobile.[1]
4	462.5875	Sm Base or mobile[2]	19		
5	462.6000	Base or mobile	20	467.6000	Mobile.[1]
6	462.6125	Sm Base or mobile[2]	21		
7	462.6250	Base or mobile	22	467.6250	Mobile.[1]
8	462.6375	Sm Base or mobile[2]	23		
9	462.6500	Base or mobile	24	467.6500	Mobile.[1]
10	462.6625	Sm Base or mobile[2]	25		
11	462.6750	Base or mobile	26	467.6750	Mobile [1]
12	462.6875	Sm Base or mobile[2]	27		
13	462.7000	Base or mobile	28	467.7000	Mobile.[1]
14	462.7125	Sm Base or mobile[2]	29		
15	462.7250	Base or mobile	30	467.7250	Mobile.[1]

[1] These channels may be used for fixed stations for controlling a repeater station.
[2] Except for a GMRS system licensed to a non-individual, a mobile station or a small base station operating in the simplex mode may transmit on these channels only under the following conditions:
(a) Only voice type emissions may be transmitted;
(b) The station does not transmit one-way pages; and
(c) The station transmits with no more than 5 watts output power.

(b) Operators of GMRS systems suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the operators are unable to do so, the FCC may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the use of any frequency at a given geographical location may be denied when, in the judgment of the FCC, its use in that location is not in the public interest; the use of any channel or channel pair may be restricted as to specified geographical areas, maximum power, or other operating conditions.

§ 95.105 Permissible communications.

(a) You may use your GMRS station only to transmit two-way plain language voice communications concerning personal or business activities. Two-way plain language communications are communications without codes or coded messages. Operating signals such as "ten codes" are not considered codes or coded messages.

(b) One way paging is not permitted.

(c) Continuous or uninterrupted transmissions, except for communications involving the immediate safety of life or property, are prohibited.

(d) GMRS units may transmit digital data containing location information, or requesting location information from one or more other units within that service, or containing a brief text message to another specific unit. Digital data transmissions must be initiated by a manual action or command of a user, except that a GMRS unit receiving an interrogation request may automatically respond with its location. Digital data transmissions shall not exceed one second, and shall be limited to no more than one digital transmission within a thirty-second period, except that a unit may automatically respond to more than one interrogation request received within a thirty-second period.

Subpart D—Radio Control (R/C) Radio Service

§ 95.201 Scope.

This subpart contains the operating requirements for the R/C Service. General and technical information pertaining to this service is contained in subparts A and B of this part.

§ 95.203 Channels available.

(a) Your R/C station may transmit only on the following channels (frequencies):

(1) The following channels may be used to operate any kind of device (any object or apparatus, except an R/C transmitter), including a model aircraft device (any small imitation of an aircraft) or a model surface craft device (any small imitation of a boat, car or vehicle for carrying people or objects, except aircraft): 26.995, 27.045, 27.095, 27.145, 27.195 and 27.255 MHz.

(2) The following channels may only be used to operate a model aircraft device:

Ch No.	Frequency (MHz)	Ch No.	Frequency (MHz)	Ch No.	Frequency (MHz)	Ch No.	Frequency (MHz)	Ch No.	Frequency (MHz)
1	72.01	11	72.21	21	72.41	31	72.61	41	72.81
2	72.03	12	72.23	22	72.43	32	72.63	42	72.83
3	72.05	13	72.25	23	72.45	33	72.65	43	72.85
4	72.07	14	72.27	24	72.47	34	72.67	44	72.87
5	72.09	15	72.29	25	72.49	35	72.69	45	72.89
6	72.11	16	72.31	26	72.51	36	72.71	46	72.91
7	72.13	17	72.33	27	72.53	37	72.73	47	72.93
8	72.15	18	72.35	28	72.55	38	72.75	48	72.95
9	72.17	19	72.37	29	72.57	39	72.77	49	72.97
10	72.19	20	72.39	30	72.59	40	72.79	50	72.99

(3) The following channels may only be used to operate model surface craft devices:

Ch No.	Frequency (MHz)	Ch No.	Frequency (MHz)	Ch No.	Frequency (MHz)	Ch No.	Frequency (MHz)	Ch No.	Frequency (MHz)
51	75.41	57	75.53	63	75.65	69	75.77	75	75.89
52	75.43	58	75.55	64	75.67	70	75.79	76	75.91
53	75.45	59	75.57	65	75.69	71	75.81	77	75.93
54	75.47	60	75.59	66	75.71	72	75.83	78	75.95
55	75.49	61	75.61	67	75.73	73	75.85	79	75.97
56	75.51	62	75.63	68	75.75	74	75.87	80	75.99

(b) R/C channels are available only on a shared basis and will not be assigned for the exclusive use of any user. All R/C users must cooperate in the selection and use of channels, including limiting communications to the minimum practical time, to reduce interference and to make the most effective use of the facilities.

(c) Your R/C station may not transmit simultaneously on more than one channel in the 72–76 MHz band when your operation would cause harmful interference to the operation of other R/C stations.

(d) Your R/C station must stop transmitting if it interferes with:

(1) Authorized radio operations in the 72–76 MHz band; or

(2) Television reception on TV Channels 4 or 5.

(e) Stations in the 26–27 MHz range are not afforded any protection from interference caused by the operation of industrial, scientific or medical devices. Such stations also operate on a shared basis with other stations in the Personal Radio Services.

(f) Stations in the 72–76 MHz range are subject to the condition that interference will not be caused to the remote control of industrial equipment operating on the same or adjacent frequencies. These frequencies are not afforded any protection from interference due to the operation of fixed and mobile stations in other services assigned to the same or adjacent frequencies.

§ 95.207 Permissible communications.

(a) You may only use your R/C station to transmit one-way communications. (One-way communications are transmissions which are not intended to establish communications with another station.)

(b) You may only use your R/C station for the following purposes:

(1) The operator turns on and/or off a device at a remote location; or

(2) A sensor at a remote location turns on and/off an indicating device for the operator. Only frequencies 26.995 to 27.255 MHz may be used for this purpose. (A remote location means a place distant from the operator).

(c) You must not use a R/C station to transmit data. Tone or other signal encoding, however, is not considered to be data when only used either for the purpose of identifying the specific device among multiple devices that the operator intends to turn on/off, or the specific sensor among multiple sensors intended to turn on/off an indicating device for the operator.

§ 95.209 Special restrictions on the location of R/C stations.

(a) If your R/C station is located on premises controlled by the Department of Defense, you may be required to comply with additional regulations imposed by the commanding officer of the installation.

(b) If your R/C station will be constructed on an environmental sensitive site, or will be operated in such a manner as to raise environmental problems, under § 1.1307 of this chapter, you must provide an environmental assessment, as set forth in § 1.1311 of this chapter, and undergo environmental review § 1.1312 of this chapter, before commencement of construction.

(c) Anyone intending to operate an R/C station on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: *prcz@naic.edu.*

(1) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the unit. The notification shall state the geographical coordinates of the unit.

(2) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

§ 95.211 Operation by remote control.

(a) You may not operate an R/C transmitter by radio remote control.

(b) You may operate an R/C transmitter by wireline remote control if you obtain specific approval in writing from the FCC. To obtain FCC approval, you must show why you need to operate your station by wireline remote control. If you receive FCC approval, you must keep the approval as part of your station records. *See* § 95.11.

(c) Remote control means operation of an R/C transmitter from any place other than the location of the R/C transmitter. Direct mechanical control or direct electrical control by wire from some point on the same premises, craft or vehicles as the R/C transmitter is not considered remote control.

Subpart E—Citizens Band (CB) Radio Service

§ 95.301 Scope.

This subpart contains the operating requirements for the CB Radio Service. Other general and technical information and requirements pertaining to this service are also contained in subparts A and B of this part.

§ 95.303 Am I eligible to operate a CB station?

You are authorized to operate a CB station unless:

(a) You are a foreign government, a representative of a foreign government, or a federal government agency; or

(b) The FCC has issued a cease and desist order to you, and the order is still in effect.

§ 95.305 Are there any special restrictions on the location of my CB station?

(a) If your CB station is located on premises controlled by the Department of Defense you may be required to comply with additional regulations imposed by the commanding officer of the installation.

(b) If your C/B station will be constructed on an environmentally sensitive site, or will be operated in such a manner as to raise environmental problems, under § 1.1307 of this chapter, you must provide an environmental assessment, as set forth in § 1.1311 of this chapter, and undergo the environmental review, § 1.1312 of this chapter, before commencement of construction.

§ 95.307 On what channels may I operate?

(a) Your CB station may transmit only on the following channels (frequencies):

Channel No.	Frequency (MHz)
1	26.965
2	26.975
3	26.985
4	27.005
5	27.015
6	27.025
7	27.035
8	27.055
9	[1] 27.065
10	27.075
11	27.085
12	27.105
13	27.115
14	27.125
15	27.135
16	27.155
17	27.165
18	27.175
19	27.185
20	27.205
21	27.215
22	27.225
23	27.255
24	27.235
25	27.245
26	27.265
27	27.275
28	27.285
29	27.295
30	27.305
31	27.315
32	27.325
33	27.335
34	27.345
35	27.355
36	27.365
37	27.375
38	27.385
39	27.395
40	27.405

[1] *See* paragraph (c) of this section.

(b) CB channels are available only on a shared basis and will not be assigned for the exclusive use of any user. All CB users must cooperate in the selection and use of channels, including limiting communications to the minimum practical time, to reduce interference and to make the most effective use of the facilities.

(c) Channel 9 may be used only for emergency communications or for traveler assistance.

(d) You may use any channel for emergency communications or for traveler assistance.

§ 95.309 Do I have any antenna limitations?

(a) If your antenna is mounted on a hand-held portable unit, none of the following limitations apply.

(b) If your antenna (whether receiving, transmitting or both) is installed at a fixed location, at its highest point, it must not be more than 6.10 meters (20 feet) higher than the highest point of the building or tree on which it is mounted; or at its highest point, it must not be higher than 18.3 meters (60 feet) above the ground.

(c) If your CB station is located near an airport, and if your antenna structure is more than 6.1 meters (20 feet) high, you may have to obey additional restrictions. The highest point of your antenna must not exceed one meter above the airport elevation for every hundred meters of distance from the nearest point of the nearest airport runway. Differences in ground elevation between your antenna and the airport runway may complicate this formula. If your CB station is near an airport, you may contact the nearest FCC field office for a worksheet to help you figure the maximum allowable height of your antenna. Consult part 17 of the Commission's rules for more information.

§ 95.311 What equipment may I use at my CB station?

(a) You must use an FCC certificated CB transmitter at your CB station. You can identify an FCC certificated transmitter by the certification label placed on it by the manufacturer. You may examine a list of certificated equipment at any FCC Field Office or at FCC Headquarters. Use of a transmitter which is not FCC certificated voids your authority to operate the station.

(b) You must not make, or have made, any modifications to a certificated CB transmitter that changes or affects the technical operation of that transmitter, including any modification to provide for additional transmitting frequencies, increased modulation level, a different form of modulation, or increased transmitter output power (either mean power or peak envelope power or both). Any internal modification to a certificated CB transmitter cancels the certification, and use of such a transmitter voids your authority to operate the station.

§ 95.313 May I use power amplifiers?

(a) You may not attach the following items (power amplifiers) to your certificated CB transmitter in any way:

(1) External radio frequency (RF) power amplifiers (sometimes called linears or linear amplifiers); or

(2) Any other devices which, when used with a radio transmitter as a signal source, are capable of amplifying the signal.

(b) There are no exceptions to this rule and use of a power amplifier voids your authority to operate the station.

(c) The FCC will presume you have used a linear or other external RF power amplifier if—

(1) It is in your possession or on your premises; and

(2) There is other evidence that you have operated your CB station with more power than allowed.

(d) Paragraph (c) of this section does not apply if you hold a license in another radio service which allows you to operate an external RF power amplifier.

§ 95.315 What communications may be transmitted?

(a) You may use your CB station to transmit two-way plain language communications. Two-way plain language communications are communications without codes or coded messages. Operating signals such as "ten codes" are not considered codes or coded messages. You may transmit two-way plain language communications only to other CB stations, to units of your own CB station or to authorized government stations on CB frequencies.

(b) You must not use a CB station to communicate with stations in other countries, except General Radio Service stations in Canada.

(c) You may use your CB station to transmit one-way communications (messages which are not intended to establish communications between two or more particular CB stations) only for emergency communications, traveler assistance, brief tests (radio checks) or voice paging.

(d) You may use your CB station to transmit a tone signal only when the signal is used to make contact or to continue communications. (Examples of circuits using these signals are tone operated squelch and selective calling circuits.) If the signal is an audible tone, it must last no longer than 15 seconds at one time. If the signal is a subaudible

tone, it may be transmitted continuously only as long as you are talking.

§ 95.317 What communications are prohibited?

(a) You must not use a CB station—

(1) In connection with any activity which is against federal, state or local law;

(2) To transmit obscene, indecent or profane words, language or meaning;

(3) To interfere intentionally with the communications of another CB station;

(4) To transmit one-way communications, except for emergency communications, traveler assistance, brief tests (radio checks), or voice paging;

(5) To advertise or solicit the sale of any goods or services;

(6) To transmit music, whistling, sound effects or any material to amuse or entertain;

(7) To transmit any sound effect solely to attract attention;

(8) To transmit the word "MAYDAY" or any other international distress signal, except when your station is located in a ship, aircraft or other vehicle which is threatened by grave and imminent danger and you are requesting immediate assistance;

(9) To communicate with, or attempt to communicate with, any CB station more than 250 kilometers (155.3 miles) away;

(10) To advertise a political candidate or political campaign; (you may use your CB radio for the business or organizational aspects of a campaign, if you follow all other applicable rules);

(11) To communicate with stations in other countries, except General Radio Service stations in Canada; or

(12) To transmit a false or deceptive communication.

(b) You must not use a CB station to transmit communications for live or delayed rebroadcast on a radio or television broadcast station. You may use your CB station to gather news items or to prepare programs.

§ 95.319 May I be paid to use my CB station?

(a) You may not accept direct or indirect payment for transmitting with a CB station.

(b) You may use a CB station to help you provide a service, and be paid for that service, as long as you are paid only for the service and not for the actual use of the CB station.

§ 95.321 Do I have to limit the length of my communications?

(a) You must limit your CB communications to the minimum practical time.

(b) If you are communicating with another CB station or stations, you, and the stations communicating with you, must limit each of your conversations to no more than five continuous minutes.

(c) At the end of your conversation, you, and the stations communicating with you, must not transmit again for at least one minute.

§ 95.323 How do I use my CB station in an emergency or to assist a traveler?

(a) You must at all times and on all channels, give priority to emergency communications.

(b) You may use your CB station for communications necessary to assist a traveler to reach a destination or to receive necessary services.

(c) You may use your CB station to transmit one-way communications concerning highway conditions to assist travelers.

§ 95.325 May I operate my CB station transmitter by remote control?

(a) You may not operate a CB station transmitter by radio remote control. The use of a hands-free wireless microphone authorized under part 15 of this chapter to operate a part 95 transmitter in the immediate vicinity is not considered operation by radio remote control for the purposes of this section.

(b) You may operate a CB transmitter by wireline remote control if you obtain specific approval in writing from the FCC. To obtain FCC approval, you must show why you need to operate your station by wireline remote control. If you receive FCC approval, you must keep the approval as part of your station records.

(c) Remote control means operation of a transmitter from any place other than the location of the transmitter. Direct mechanical control or direct electrical control by wire from some point on the same premises, craft or vehicle as the transmitter is not considered remote control.

§ 95.327 May I connect my CB station transmitter to a telephone?

(a) You may connect your CB station transmitter to a telephone if you comply with all of the following:

(1) You or someone else must be present at your CB station and must—

(i) Manually make the connection (the connection must not be made by remote control);

(ii) Supervise the operation of the transmitter during the connection;

(iii) Listen to each communication during the connection; and

(iv) Stop all communications if there are operations in violation of the Commission's rules.

(2) Each communication during the telephone connection must comply with all of the Commission's rules.

(3) You must obey any restriction that the telephone company places on the connection of a CB transmitter to a telephone.

(b) The CB transmitter you connect to a telephone must not be shared with any other CB station.

(c) If you connect your CB transmitter to a telephone, you must use a phone patch device which has been registered with the FCC.

Subpart F—Family Radio Service (FRS)

§ 95.401 Scope.

This subpart contains the operating requirements for the FRS. General and technical information pertaining to this service is contained in subparts A and B.

§ 95.403 Channels available.

(a) The FRS unit channel frequencies are:

Channel No.	Frequency (MHz)
1	462.5625
2	462.5875
3	462.6125
4	462.6375
5	462.6625
6	462.6875
7	462.7125
8	467.5625
9	467.5875
10	467.6125
11	467.6375
12	467.6625
13	467.6875
14	467.7125

(b) FRS channels are available only on a shared basis and will not be assigned for the exclusive use of any user. All FRS users must cooperate in the selection and use of channels, including limiting communications to the minimum practical time, to reduce interference and to make the most effective use of the facilities.

§ 95.405 Permissible communications.

You may use an FRS unit to conduct two-way voice communications with another person. You may use the FRS unit to transmit one-way communications only to establish communications with another person, send an emergency message, provide traveler assistance, provide location information, transmit a brief text message, make a voice page, or to conduct a brief test.

Subpart G—Low Power Radio Service (LPRS)

§ 95.501 Scope.

This subpart contains the operating requirements for the LPRS. General and

technical information pertaining to this service is contained in subparts A and B of this part.

§ 95.503 Channels available.

(a) LPRS transmitters may operate on any frequency listed in paragraphs (b), (c), and (d) of this section. Channels 19, 20, 50, and 151–160 are available exclusively for law enforcement tracking purposes. AMTS transmissions are limited to the 216.750–217.000 MHz band for low power point-to-point network control communications by AMTS coast stations. Other AMTS transmissions in the 216–217 MHz band are prohibited.

(b) The following table indicates standard band frequencies (the channel bandwidth is 25 kHz):

Channel No.	Center frequency (MHz)
1	216.0125
2	216.0375
3	216.0625
4	216.0875
5	216.1125
6	216.1375
7	216.1625
8	216.1875
9	216.2125
10	216.2375
11	216.2625
12	216.2875
13	216.3125
14	216.3375
15	216.3625
16	216.3875
17	216.4125
18	216.4375
19	216.4625
20	216.4875
21	216.5125
22	216.5375
23	216.5625
24	216.5875
25	216.6125
26	216.6375
27	216.6625
28	216.6875
29	216.7125
30	216.7375
31	216.7625
32	216.7875
33	216.8125
34	216.8375
35	216.8625
36	216.8875
37	216.9125
38	216.9375
39	216.9625
40	216.9875

(c) The following table indicates extra band frequencies (the channel bandwidth is 50 kHz):

Channel No.	Center frequency (MHz)
41	216.025
42	216.075
43	216.125
44	216.175
45	216.225
46	216.275
47	216.325
48	216.375
49	216.425
50	216.475
51	216.525
52	216.575
53	216.625
54	216.675
55	216.725
56	216.775
57	216.825
58	216.875
59	216.925
60	216.975

(d) The following table indicates narrowband frequencies (the channel bandwidth is 5 kHz and the authorized bandwidth is 4 kHz):

Channel No.	Center frequency (MHz)
61	216.0025
62	216.0075
63	216.0125
64	216.0175
65	216.0225
66	216.0275
67	216.0325
68	216.0375
69	216.0425
70	216.0475
71	216.0525
72	216.0575
73	216.0625
74	216.0675
75	216.0725
76	216.0775
77	216.0825
78	216.0875
79	216.0925
80	216.0975
81	216.1025
82	216.1075
83	216.1125
84	216.1175
85	216.1225
86	216.1275
87	216.1325
88	216.1375
89	216.1425
90	216.1475
91	216.1525
92	216.1575
93	216.1625
94	216.1675
95	216.1725
96	216.1775
97	216.1825
98	216.1875
99	216.1925
100	216.1975
101	216.2025
102	216.2075
103	216.2125
104	216.2175
105	216.2225
106	216.2275
107	216.2325
108	216.2375
109	216.2425
110	216.2475
111	216.2525
112	216.2575
113	216.2625
114	216.2675
115	216.2725
116	216.2775
117	216.2825
118	216.2875
119	216.2925
120	216.2975
121	216.3025
122	216.3075
123	216.3125
124	216.3175
125	216.3225
126	216.3275
127	216.3325
128	216.3375
129	216.3425
130	216.3475
131	216.3525
132	216.3575
133	216.3625
134	216.3675
135	216.3725
136	216.3775
137	216.3825
138	216.3875
139	216.3925
140	216.3975
141	216.4025
142	216.4075
143	216.4125
144	216.4175
145	216.4225
146	216.4275
147	216.4325
148	216.4375
149	216.4425
150	216.4475
151	216.4525
152	216.4575
153	216.4625
154	216.4675
155	216.4725
156	216.4775
157	216.4825
158	216.4875
159	216.4925
160	216.4975
161	216.5025
162	216.5075
163	216.5125
164	216.5175
165	216.5225
166	216.5275
167	216.5325
168	216.5375
169	216.5425
170	216.5475
171	216.5525
172	216.5575
173	216.5625
174	216.5675
175	216.5725

Channel No.	Center frequency (MHz)
176	216.5775
177	216.5825
178	216.5875
179	216.5925
180	216.5975
181	216.6025
182	216.6075
183	216.6125
184	216.6175
185	216.6225
186	216.6275
187	216.6325
188	216.6375
189	216.6425
190	216.6475
191	216.6525
192	216.6575
193	216.6625
194	216.6675
195	216.6725
196	216.6775
197	216.6825
198	216.6875
199	216.6925
200	216.6975
201	216.7025
202	216.7075
203	216.7125
204	216.7175
205	216.7225
206	216.7275
207	216.7325
208	216.7375
209	216.7425
210	216.7475
211	216.7525
212	216.7575
213	216.7625
214	216.7675
215	216.7725
216	216.7775
217	216.7825
218	216.7875
219	216.7925
220	216.7975
221	216.8025
222	216.8075
223	216.8125
224	216.8175
225	216.8225
226	216.8275
227	216.8325
228	216.8375
229	216.8425
230	216.8475
231	216.8525
232	216.8575
233	216.8625
234	216.8675
235	216.8725
236	216.8775
237	216.8825
238	216.8875
239	216.8925
240	216.8975
241	216.9025
242	216.9075
243	216.9125
244	216.9175
245	216.9225
246	216.9275
247	216.9325
248	216.9375
249	216.9425
250	216.9475
251	216.9525
252	216.9575
253	216.9625
254	216.9675
255	216.9725
256	216.9775
257	216.9825
258	216.9875
259	216.9925
260	216.9975

(e) LPRS channels are available only on a shared basis and will not be assigned for the exclusive use of any user. All LPRS users must cooperate in the selection and use of channels, including limiting communications to the minimum practical time, to reduce interference and to make the most effective use of the facilities.

(f) Operation is subject to the conditions that no harmful interference is caused to the United States Air Force Space Surveillance system (operating in the band 216.88–217.08 MHz) or to TV reception within the Grade B contour of any TV Channel 13 station or within the 68 dBμV/m predicted contour of any low power TV or TV translator station operating on Channel 13.

§ 95.505 Permissible communications.

(a) LPRS stations may transmit voice, data, or tracking signals as permitted in this section. Two-way voice communications are prohibited.

(b) Auditory assistance communications (including but not limited to applications such as assistive listening devices, audio description for the blind, and simultaneous language translation) for:

(1) Persons with disabilities. In the context of the LPRS, the term "disability" has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 2102(2)(A)), *i.e.,* persons with a physical or mental impairment that substantially limits one or more of the major life activities of such individuals;

(2) Persons who require language translation; or

(3) Persons who may otherwise benefit from auditory assistance communications in educational settings.

(c) Health care related communications for the ill.

(d) Law enforcement tracking signals (for homing or interrogation) including the tracking of persons or stolen goods under authority or agreement with a law enforcement agency (federal, state, or local) having jurisdiction in the area where the transmitters are placed.

(e) AMTS point-to-point network control communications.

§ 95.507 Notification requirement.

Prior to operating a LPRS transmitter for AMTS purposes, an AMTS licensee must notify, in writing, each television station that may be affected by such operations, as defined in § 80.215(h) of this chapter. The notification provided with the station's license application is sufficient to satisfy this requirement if no new television stations would be affected.

§ 95.509 Marketing limitations.

Transmitters intended for operation in the LPRS may be marketed and sold only for those uses described in § 95.505(a) through (d).

Subpart H—Wireless Medical Telemetry Service (WMTS)

§ 95.601 Scope.

This subpart sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz and 1427–1429.5 MHz frequency bands.

§ 95.603 Channels available.

(a) WMTS transmitters may operate on any channel within frequency bands 608–614 MHz, 1395–1400 MHz, and 1427–1432 MHz, as specified in paragraph (b) of this section.

(b) In the 608–614 MHz band, wireless medical telemetry devices utilizing broadband technologies such as spread spectrum shall be capable of operating within one or more of the following channels of 1.5 MHz each, up to a maximum of 6 MHz, and shall operate on the minimum number of channels necessary to avoid harmful interference to any other wireless medical telemetry devices.

Channel number	Channel bandwidth
1	608.0–609.5 MHz
2	609.5–611.0 MHz
3	611.0–612.5 MHz
4	612.5–614.0 MHz

(c) WMTS channels are available only on a shared basis and will not be assigned for the exclusive use of any user. All WMTS users must cooperate in the selection and use of channels, including limiting communications to the minimum practical time, to reduce interference and to make the most effective use of the facilities.

(d) Operations in the 608–614 MHz band (television Channel 37) are not protected from adjacent band

interference from broadcast television operating on Channels 36 and 38.

§ 95.605 Permissible communications.

(a) All types of communications except voice and video are permitted, on both a unidirectional and bidirectional basis, provided that all such communications are related to the provision of medical care. Waveforms such as electrocardiograms (ECGs) are not considered video.

(b) Operations that comply with the requirements of this part may be conducted under manual or automatic control, and on a continuous basis.

§ 95.607 Frequency coordination.

(a) Prior to operation, authorized health care providers who desire to use wireless medical telemetry devices must register all devices with a designated frequency coordinator. The registration must include the following information:

(1) Specific frequencies or frequency range(s) used;

(2) Modulation scheme used (including occupied bandwidth);

(3) Effective radiated power;

(4) Number of transmitters in use at the health care facility as of the date of registration including manufacturer name(s) and model numbers;

(5) Legal name of the authorized health care provider;

(6) Location of transmitter (coordinates, street address, building); and

(7) Point of contact for the authorized health care provider (name, title, office, phone number, fax number, e-mail address).

(b) An authorized health care provider shall notify the frequency coordinator whenever a medical telemetry device is permanently taken out of service, unless the device is replaced with another transmitter utilizing the same technical characteristics as those reported on the effective registration. An authorized health care provider shall maintain the information contained in each registration current in all material respects, and shall notify the frequency coordinator when any change is made in the location or operating parameters previously reported which is material.

§ 95.609 Frequency coordinator.

(a) The Commission's frequency coordinator(s) to manage the usage of the frequency bands for the operation of medical telemetry devices is (are):

John T. Collins, Director of Engineering and Compliance, American Hospital Association, One North Franklin, Chicago, IL 60606, P: 312–422–3805, F: 312–422–4571, E: *jcollins@aha.org.*

Updated information on the Commission's frequency coordinator can be found at: *http://wireless.fcc.gov/services/index.htm?job=licensing_1&id=wireless_medical_telemetry*

(b) The frequency coordinator shall:

(1) Review and process coordination requests submitted by authorized health care providers as required in § 95.609;

(2) Maintain a database of WMTS use;

(3) Notify users of potential conflicts;

(4) Coordinate WMTS operation with radio astronomy observatories and Federal Government radar systems as specified in §§ 95.613 and 95.615.

(5) Notify licensees—who are operating in accordance with § 90.259(b) of this chapter—of the need to comply with the field strength limit of § 90.259(b)(11) of this chapter prior to initial activation of WMTS equipment in the 1427–1432 MHz band.

(6) Notify licensees—who are operating in 1392–1395 MHz band in accordance with part 27, subpart I of this chapter—of the need to comply with the field strength limit of § 27.804 of this chapter prior to initial activation of WMTS equipment in the 1395–1400 MHz band.

§ 95.611 Special requirements for operating in the 608–614 MHz band.

For a wireless medical telemetry device operating within the frequency range 608–614 MHz and that will be located near the radio astronomy observatories listed below, operation is not permitted until a WMTS frequency coordinator specified in § 95.609 has coordinated with, and obtained the written concurrence of, the director of the affected radio astronomy observatory before the equipment can be installed or operated.

(a) Within 80 kilometers of:

(1) National Astronomy and Ionosphere Center, Arecibo, Puerto Rico: 18°-20′-38.28″ North Latitude, 66°-45′-09.42″ West Longitude;

(2) National Radio Astronomy Observatory, Socorro, New Mexico: 34°-04′-43″ North Latitude, 107°-37′-04″ West Longitude; or

(3) National Radio Astronomy Observatory, Green Bank, West Virginia: 38°-26′-08″ North Latitude, 79°-49′-42″ West Longitude.

(b) Within 32 kilometers of the National Radio Astronomy Observatory centered on:

Very long baseline array stations	Latitude (north)	Longitude (west)
Pie Town, NM	34°-18′	108°-07′
Kitt Peak, AZ	31°-57′	111°-37′
Los Alamos, NM	35°-47′	106°-15′
Fort Davis, TX	30°-38′	103°-57′
North Liberty, IA	41°-46′	91°-34′
Brewster, WA	48°-08′	119°-41′
Owens Valley, CA	37°-14′	118°-17′
Saint Croix, VI	17°-46′	64°-35′
Mauna Kea, HI	19°-49′	155°-28′
Hancock, NH	42°-56′	71°-59′

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, telephone: 703–306–1823.

§ 95.613 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 and 1427–1429.5 MHz bands.

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any Federal Government systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1427–1429.5 MHz bands. The locations of government systems in these bands are specified in footnotes US351 and US352 of § 2.106 of this chapter.

§ 95.615 Protection of medical equipment.

The manufacturers, installers and users of WMTS equipment are cautioned that the operation of this equipment could result in harmful interference to other nearby medical devices.

Subpart I—Medical Device Radio Communications Service (MedRadio)

§ 95.701 Scope.

This subpart contains the operating requirements for the MedRadio. General information pertaining to this service is contained in subpart A of this part.

§ 95.703 Permissible communications.

(a) Except for the purposes of testing and for demonstrations to health care professionals, MedRadio programmer/control transmitters may transmit only non-voice data containing operational, diagnostic and therapeutic information associated with a medical implant device or medical body-worn device that has been implanted or placed on the person by or under the direction of a duly authorized health care professional.

(b) Except in response to a medical implant event, or except as provided in § 95.715(b)(3), in the 402–405 MHz band no medical implant transmitter shall transmit except in response to a transmission from a medical implant programmer/control transmitter or in response to a non-radio frequency actuation signal generated by a device external to the body in which the medical implant transmitter is implanted or is to be implanted.

(c) MedRadio programmer/control transmitters may be interconnected with other telecommunications systems including the public switched telephone network.

(d) For the purpose of facilitating MedRadio system operation during a MedRadio communications session, as defined in § 95.3, MedRadio transmitters may transmit in accordance with the provisions of § 95.715(a) for no more than 5 seconds without the communications of data; MedRadio transmitters may transmit in accordance with the provisions of § 95.715(b)(3) for no more than 3.6 seconds in total within a one hour time period without the communications of data; MedRadio transmitters may transmit in accordance with the provisions of § 95.715(b)(2) for no more than 360 milliseconds in total within a one hour time period without the communications of data.

(e) MedRadio programmer/control transmitters may not be used to relay information to a receiver that is not included with a medical implant or medical body-worn device. Wireless retransmission of information intended to be transmitted by a MedRadio programmer/control transmitter or information received from a medical implant or medical body-worn transmitter shall be performed using other radio services that operate in spectrum outside of the MedRadio band.

§ 95.705 Channel use policy.

(a) The channels authorized for MedRadio operation by this part of the Commission's rules are available on a shared basis only and will not be assigned for the exclusive use of any entity.

(b) To reduce interference and make the most effective use of the authorized facilities, MedRadio transmitters must share the spectrum in accordance with § 95.715.

(c) MedRadio operation is subject to the condition that no harmful interference is caused to stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, or Earth Exploration Satellite Services. MedRadio stations must accept any interference from stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, or Earth Exploration Satellite Services. MedRadio devices should take the necessary steps to prevent the disruption of time sensitive medical communication sessions that could result from interference caused by the federal systems operating in the band.

§ 95.707 Disclosure polices.

Manufacturers of MedRadio transmitters must include with each transmitting device the following statement:

"This transmitter is authorized by rule under the Medical Device Radiocommunication Service (in part 95 of the Commission's rules) and must not cause harmful interference to stations operating in the 400.150–406.000 MHz band in the Meteorological Aids (*i.e.,* transmitters and receivers used to communicate weather data), the Meteorological Satellite, or the Earth Exploration Satellite Services and must accept interference that may be caused by such stations, including interference that may cause undesired operation. This transmitter shall be used only in accordance with the Commission's rules governing the Medical Device Radiocommunication Service. Analog and digital voice communications are prohibited. Although this transmitter has been approved by the Federal Communications Commission, there is no guarantee that it will not receive interference or that any particular transmission from this transmitter will be free from interference."

§ 95.709 Labeling requirements.

(a) MedRadio programmer/control transmitters shall be labeled as provided in part 2 of this chapter and shall bear the following statement in a conspicuous location on the device:

"This device may not interfere with stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, and Earth Exploration Satellite Services and must accept any interference received, including interference that may cause undesired operation."

The statement may be placed in the instruction manual for the transmitter where it is not feasible to place the statement on the device.

(b) Where a MedRadio programmer/control transmitter is constructed in two or more sections connected by wire and marketed together, the statement specified in this section is required to be affixed only to the main control unit.

(c) MedRadio transmitters shall be identified with a serial number. The FCC ID number associated with a medical implant transmitter and the information required by § 2.925 of this chapter may be placed in the instruction manual for the transmitter and on the shipping container for the transmitter, in lieu of being placed directly on the transmitter.

§ 95.711 Marketing limitations.

Transmitters intended for operation in the MedRadio Service may be marketed and sold only for the permissible communications described in § 95.703.

§ 95.713 Certification procedures.

Any entity may request certification for its transmitter when the transmitter is used in the GMRS, FRS, R/C, CB, 218–219 MHz Service, LPRS, MURS, or MedRadio Service following the procedures in part 2 of this chapter. Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBUs) must be certified in accordance with subpart L of this part and part 2, subpart J of this chapter.

§ 95.715 MedRadio transmitters.

(a) *Frequency monitoring.* Except as provided in paragraph (b) of this section, all MedRadio programmer/control transmitters operating in the 401–406 MHz band must operate under the control of a monitoring system that incorporates a mechanism for monitoring the channel or channels that the MedRadio system devices intend to occupy. The monitoring system antenna shall be the antenna normally used by the programmer/control transmitter for a communications session. Before the monitoring system of a MedRadio programmer/control transmitter initiates a MedRadio communications session, the following access criteria must be met:

(1) The monitoring system bandwidth measured at its 20 dB down points must be equal to or greater than the emission bandwidth of the intended transmission.

(2) Within 5 seconds prior to initiating a communications session, circuitry associated with a MedRadio programmer/control transmitter must monitor the channel or channels the system devices intend to occupy for a minimum of 10 milliseconds per channel.

(3) Based on use of an isotropic monitoring system antenna, the monitoring threshold power level must not be more than $10\log B(\mathrm{Hz}) - 150$ (dBm/Hz) + G(dBi), where B is the emission bandwidth of the MedRadio communications session transmitter

having the widest emission and G is the MedRadio programmer/control transmitter monitoring system antenna gain relative to an isotropic antenna. For purposes of showing compliance with the above provision, the above calculated threshold power level must be increased or decreased by an amount equal to the monitoring system antenna gain above or below the gain of an isotropic antenna, respectively.

(4) If no signal in a MedRadio channel above the monitoring threshold power level is detected, the MedRadio programmer/control transmitter may initiate a MedRadio communications session involving transmissions to and from a medical implant or medical body-worn device on that channel. The MedRadio communications session may continue as long as any silent period between consecutive data transmission bursts does not exceed 5 seconds. If a channel meeting the criteria in paragraph (a)(3) of this section is unavailable, the channel with the lowest ambient power level may be accessed.

(5) When a channel is selected prior to a MedRadio communications session, it is permissible to select an alternate channel for use if communications are interrupted, provided that the alternate channel selected is the next best choice using the above criteria. The alternate channel may be accessed in the event a communications session is interrupted by interference. The following criteria must be met:

(i) Before transmitting on the alternate channel, the channel must be monitored for a period of at least 10 milliseconds.

(ii) The detected power level during this 10 milliseconds or greater monitoring period must be no higher than 6 dB above the power level detected when the channel was chosen as the alternate channel.

(iii) In the event that this alternate channel provision is not used by the MedRadio system or if the criteria in paragraph (5)(i) and (5)(ii) of this section above are not met, a channel must be selected using the access criteria specified in paragraphs (a)(1) through (a)(4) of this section.

(6) As used in this section, the following definitions apply:

(i) *Emission bandwidth*—Measured as the width of the signal between the points on either side of carrier center frequency that are 20 dB down relative to the maximum level of the modulated carrier. Compliance will be determined using instrumentation employing a peak detector function and a resolution bandwidth approximately equal to 1% of the emission bandwidth of the device under test.

(ii) *MedRadio channel*—Any continuous segment of spectrum in the MedRadio band that is equal to the emission bandwidth of the device with the largest bandwidth that is to participate in a MedRadio communications session.

Note: The rules do not specify a channeling scheme for use by MedRadio systems.

(iii) *MedRadio communications session*—A collection of transmissions that may or may not be continuous between MedRadio system devices.

(b) *Exceptions to frequency monitoring criteria.* MedRadio devices or communications sessions that meet any one of the following criteria are not required to use the access criteria set forth in paragraph (a) of this section:

(1) MedRadio communications sessions initiated by a medical implant event.

(2) MedRadio devices operating in either the 401–401.85 MHz or 405–406 MHz bands, provided that the transmit power is not greater than 250 nanowatts EIRP and the duty cycle for such transmissions does not exceed 0.1%, based on the total transmission time during a one-hour interval.

(3) MedRadio devices operating in the 401.85–402 MHz band, provided that the transmit power is not greater than 25 microwatts EIRP and the duty cycle for such transmissions does not exceed 0.1%, based on the total transmission time during a one-hour interval.

(4) MedRadio devices operating with a total emission bandwidth not exceeding 300 kHz centered at 403.65 MHz, provided that the transmit power is not greater than 100 nanowatts EIRP and the duty cycle for such transmissions does not exceed 0.01%, based on the total transmission time during a one-hour interval.

(c) *Operating frequency.* MedRadio stations authorized under this part may operate on frequencies in the 401–406 MHz band as follows provided that the out-of-band emissions are attenuated in accordance with § 95.723:

(1) MedRadio stations associated with medical implant devices, which incorporate a frequency monitoring system as set forth in paragraph (a) of this section, may operate on any of the frequencies in the 401–406 MHz band,

(2) MedRadio stations associated with medical implant devices, which do not incorporate a frequency monitoring system as set forth in paragraph (a) of this section, may operate on any frequency in 401–402 MHz or 405–406 MHz bands, or at 403.65 MHz in the 402–405 MHz band.

(3) MedRadio stations associated with medical body-worn devices, regardless of whether a frequency monitoring system as set forth in paragraph (a) this section is employed, may operate on any of the frequencies in the 401–402 MHz or 405–406 MHz bands.

(4) MedRadio stations that are used externally to evaluate the efficacy of a more permanent medical implant device, regardless of whether a frequency monitoring system as set forth in paragraph (a) of this section is employed, may operate on any of the frequencies in the 402–405 MHz band, provided that:

(i) Such external body-worn operation is limited solely to evaluating with a patient the efficacy of a fully implanted permanent medical device that is intended to replace the temporary body-worn device;

(ii) RF transmissions from the external device must cease following the patient evaluation period, which may not exceed 30 days, except where a health care practitioner determines that additional time is necessary due to unforeseen circumstances;

(iii) The maximum output power of the temporary body-worn device shall not exceed 200 nW EIRP; and

(iv) The temporary body-worn device must comply fully with all other MedRadio rules applicable to medical implant device operation in the 402–405 MHz band.

(d) *Authorized bandwidth.* The authorized bandwidth of the emission from a MedRadio station operating between 402–405 MHz shall not exceed 300 kHz, and no communications session involving MedRadio stations shall use more than a total of 300 kHz of bandwidth during such a session. The authorized bandwidth of the emission from a MedRadio station operating between 401–401.85 MHz or 405–406 MHz shall not exceed 100 kHz, and no communications session involving MedRadio stations shall use more than a total of 100 kHz of bandwidth during such a session. The authorized bandwidth of the emission from a MedRadio station operating between 401.85–402 MHz shall not exceed 150 kHz, and no communications session involving MedRadio stations shall use more than a total of 150 kHz of bandwidth during such a session. This provision does not preclude full duplex or half duplex communications provided that the total amount of bandwidth utilized by all of the MedRadio channels employed in such a MedRadio communications session does not exceed 300 kHz in the 402–405 MHz band, or 100 kHz in the 401–402 MHz and 405–406 MHz bands.

(e) *Frequency stability.* Each transmitter in the MedRadio service

must maintain a frequency stability of ±100 ppm of the operating frequency over the range:

(1) 25 °C to 45 °C in the case of medical implant transmitters; and

(2) 0°C to 55°C in the case of MedRadio programmer/control transmitters and MedRadio body-worn transmitters.

(f) *Shared access.* The provisions of this section shall not be used to extend the range of spectrum occupied over space or time for the purpose of denying fair access to spectrum for other MedRadio systems.

(g) Measurement procedures.

(1) MedRadio transmitters shall be tested for frequency stability, radiated emissions and EIRP limit compliance in accordance with paragraphs (g)(2) and (g)(3) of this section.

(2) Frequency stability testing shall be performed over the temperature range set forth in paragraph (e) of this section.

(3) Radiated emissions and EIRP limit measurements limit may be determined by measuring the radiated field from the equipment under test at 3 meters and calculating the EIRP. The equivalent radiated field strength at 3 meters for 25 microwatts, 250 nanowatts, and 100 nanowatts EIRP is 18.2, 1.8, or 1.2 mV/meter, respectively, when measured on an open area test site; or 9.1, 0.9, or 0.6 mV/meter, respectively, when measured on a test site equivalent to free space such as a fully anechoic test chamber. Power measurements for transmissions by stations authorized under this section may be made either in accordance with a Commission-approved peak power technique, or the following. Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

(i) For a transmitter intended to be implanted in a human body, radiated emissions and EIRP measurements for transmissions by stations authorized under this section may be made in accordance with a Commission-approved human body simulator and test technique. A formula for a suitable tissue substitute material is defined in OET Bulletin 65 Supplement C (01–01).

(ii) For a transmitter intended to be body-worn, and for programmer/control transmitters, use standard ANSI C63.4 test setup and test method.

§ 95.717 Maximum transmitter power.

In the MedRadio Service for transmitters that are not excepted under § 95.715(b) from the frequency monitoring requirements of § 95.715(a), the maximum radiated power in any 300 kHz bandwidth by MedRadio transmitters operating at 402–405 MHz, or in any 100 kHz bandwidth by MedRadio transmitters operating at 401–402 MHz or 405–406 MHz shall not exceed 25 microwatts EIRP. For transmitters that are excepted under § 95.715(b) from the frequency monitoring requirements of § 95.715(a), the power radiated by any station operating in 402–405 MHz shall not exceed 100 nanowatts EIRP confined to a maximum total emission bandwidth of 300 kHz centered at 403.65 MHz. For transmitters that are excepted under § 95.715(b) from the frequency monitoring requirements of § 95.715(a), the power radiated by any station operating in 401–401.85 MHz or 405–406 MHz shall not exceed 250 nanowatts EIRP in any 100 kHz bandwidth and in 401.85–402 MHz shall not exceed 25 microwatts in the 150 kHz bandwidth. *See* § 95.721(a). The antenna associated with any MedRadio transmitter must be supplied with the transmitter and shall be considered part of the transmitter subject to equipment authorization. Compliance with these EIRP limits may be determined as set forth in § 95.715(g).

§ 95.719 Emission types.

A MedRadio station may transmit any emission type appropriate for communications in this service. Voice communications, however, are prohibited.

§ 95.721 Emission bandwidth.

(a) For MedRadio Service stations operating in 402–405 MHz, the maximum authorized emission bandwidth is 300 kHz. For stations operating in 401–401.85 MHz or 405–406 MHz, the maximum authorized emission bandwidth is 100 kHz, and for stations operating in 401.85–402 MHz, the maximum authorized emission bandwidth is 150 kHz.

(b) Lesser emission bandwidths may be employed, provided that the unwanted emissions are attenuated as provided in § 95.723. *See* §§ 95.715(g) and 95.717 regarding maximum transmitter power and measurement procedures.

§ 95.723 Unwanted radiation.

(a) In addition to the procedures in part 2 of this chapter, the following requirements apply to each transmitter both with and without the connection of all attachments acceptable for use with the transmitter, such as an external speaker, power cord, antenna, etc.

(b) For transmitters designed to operate in the MedRadio service, emissions shall be attenuated in accordance with the following (paragraphs (b)(1) through (b)(5) of this section pertain to MedRadio transmitters operating in the 402–405 MHz band; paragraphs (b)(6) through (b)(10) of this section pertain to MedRadio transmitters operating in the 401–402 MHz or 405–406 MHz bands):

(1) Emissions from a MedRadio transmitter more than 250 kHz outside of the 402–405 MHz band shall be attenuated to a level no greater than the following field strength limits:

Frequency (MHz)	Field strength (μV/m)	Measurement distance (m)
30–88	100	3
88–216	150	3
216–960	200	3
960 and above	500	3

Note: At band edges, the tighter limit applies.

(2) The emission limits shown in the above table are based on measurements employing a CISPR quasi-peak detector except that above 1 GHz, the limit is based on measurements employing an average detector. Measurements above 1 GHz shall be performed using a minimum resolution bandwidth of 1 MHz. *See* also § 95.713.

(3) The emissions from a MedRadio transmitter must be measured to at least the tenth harmonic of the highest fundamental frequency designed to be emitted by the transmitter.

(4) Emissions within the 402–405 MHz band more than 150 kHz away from the center frequency of the spectrum the transmission is intended to occupy will be attenuated below the transmitter output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(5) Emissions 250 kHz or less that are above and below the 402–405 MHz band will be attenuated below the maximum permitted output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(6) Emissions from medical device transmitters operating in the 401–402 MHz or 405–406 MHz bands at more than 100 kHz outside of the MedRadio bands (401–406 MHz) and all emissions in the band 406.000–406.100 MHz shall be attenuated to a level no greater than the following field strength limits:

Frequency (MHz)	Field strength (μV/m)	Measurement distance (m)
30–88	100	3
88–216	150	3
216–960	200	3
960 and above	500	3

Note: At band edges, the tighter limit applies.

(7) The emission limits shown in paragraph (b)(6) of this section are based on measurements employing a CISPR quasi-peak detector except that above 1 GHz, the limit is based on measurements employing an average detector. Measurements above 1 GHz shall be performed using a minimum resolution bandwidth of 1 MHz. *See also* § 95.713.

(8) The emissions from a medical device transmitter operating in the MedRadio bands (between 401–402 MHz or 405–406 MHz) must be measured to at least the tenth harmonic of the highest fundamental frequency designed to be emitted by the transmitter.

(9) Emissions within the MedRadio bands more than 50 kHz away from the center frequency of the spectrum the transmission is intended to occupy, shall be attenuated below the transmitter output power by at least 20 dB except as noted in paragraph (b)(7) of this section. Compliance with this limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(10) Emissions 100 kHz or less below 401 MHz shall be attenuated below the maximum permitted output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

§ 95.725 Antennas.

No antenna for a MedRadio transmitter shall be configured for permanent outdoor use. In addition, any MedRadio antenna used outdoors shall not be affixed to any structure for which the height to the tip of the antenna will exceed three (3) meters (9.8 feet) above ground.

§ 95.727 RF exposure.

MedRadio medical implant or medical body-worn transmitters (as defined in § 95.3) are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of implant devices operating under this section must contain a finite difference time domain (FDTD) computational modeling report showing compliance with these provisions for fundamental emissions. The Commission retains the discretion to request the submission of specific absorption rate measurement data.

Subpart J—Multi-Use Radio Service (MURS)

§ 95.801 Scope.

This subpart contains the operating requirements for the MURS. General and technical information pertaining to this service is contained in subparts A and B.

§ 95.803 Channels available.

(a) Channels available:

Channel No.	Frequency (MHz)
1	151.820
2	151.880
3	151.940
4	154.570
5	154.600

(b) MURS channels are available only on a shared basis and will not be assigned for the exclusive use of any user. All MURS users must cooperate in the selection and use of channels, including limiting communications to the minimum practical time, to reduce interference and to make the most effective use of the facilities.

§ 95.805 Permissible communications.

(a) MURS stations may transmit voice, data or image signals as permitted in this subpart.

(b) MURS frequencies may be used for remote control and telemetering functions. Stations used to control remote objects or devices may be operated on the continuous carrier transmit mode, except on frequency 154.600 MHz.

(c) MURS users shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.

§ 95.807 Repeater operations and signal boosters prohibited.

MURS stations are prohibited from operating as a repeater station or as a signal booster. This prohibition includes store-and-forward packet operation.

§ 95.809 Grandfathered MURS Stations.

Stations that were licensed under part 90 of the Commission's rules to operate on MURS frequencies as of November 13, 2000, are granted a license by rule

that authorizes continued operations under the terms of such nullified part 90 authorizations of this chapter, including any rule waivers.

Subpart K—Personal Locator Beacon (PLB)

§ 95.901 Scope.

This subpart sets out the regulations governing PLBs. PLBs are intended to provide individuals in remote areas a means to alert others of an emergency situation and to aid search and rescue personnel to locate those in distress. General and technical information pertaining to this service is contained in subparts A and B.

§ 95.903 Channels available.

PLB transmitters must operate in the 406.0–406.1 MHz band.

§ 95.905 Permissible communications.

Use of PLB frequencies under this part is limited to the transmission of distress and safety communications.

§ 95.907 Special requirements for 406 MHz PLBs.

(a) All 406 MHz PLBs must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime (RTCM) Service document " RTCM Standard 11010.2 for 406 MHz Satellite Personal Locator Beacons (PLBs)," Version 1.1, RTCM Paper 114–2008–SC110–STD, dated July 10, 2008. This RTCM document is incorporated by reference in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. Copies of the document are available and may be obtained from the Radio Technical Commission for Maritime Services, 1800 N. Kent St., Suite 1060, Arlington, Virginia 22209–2901. The document is available for inspection at Commission headquarters at 445 12th Street SW., Washington, DC 20554. Copies may also be inspected 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/code-of-federal-regulations/ibr-locations.html.*

(b) The 406 MHz PLB must contain, as an integral part, a homing beacon operating only on 121.500 MHz and meeting all requirements described in the RTCM Recommended Standards document described in paragraph (a) of this section. The 121.500 MHz homing beacon must have a continuous duty cycle that can be interrupted only during the transmission of the 406 MHz signal. The 406 MHz PLB shall transmit a unique identifier (Morse code "P") on the 121.500 MHz signals.

(c) Before a 406 MHz PLB certification application is submitted to the Commission, the applicant must have obtained certification from a test facility, recognized by one of the COSPAS/SARSAT Partners, that the PLB satisfies the standards contained in the COSPAS/SARSAT document COSPAS/SARSAT 406 MHz Distress Beacon Type Approval Standard (C/S T.007). Additionally, an independent test facility must certify that the PLB complies with the electrical and environmental standards associated with the RTCM Recommended Standards.

(d) The procedures of Notification by the equipment manufacturer and Certification from either the Commission or designated Telecommunications Certification Body are contained in part 2, subpart J of this chapter.

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406 MHz COSPAS/SARSAT satellite system, must be programmed in each PLB unit to establish a unique identification for each PLB station. With each marketable PLB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the PLB identification code addressed to: SARSAT Beacon Registration, NOAA, NESDIS, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4303. The registration card must request the owner's name, address, telephone number, alternate emergency contact and include the following statement: "WARNING—failure to register this PLB with NOAA could result in a monetary forfeiture order being issued to the owner."

(f) To enhance protection of life and property, it is mandatory that each 406 MHz PLB be registered with NOAA and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406 MHz PLB must be provided on the outside with a clearly discernible permanent plate or label containing the following statement: "The owner of this 406 MHz PLB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: SARSAT Beacon Registration, NOAA, NESDIS, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4303." Owners shall advise NOAA in writing upon change of PLB ownership, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

(g) For 406 MHz PLBs with identification codes that can be changed after manufacture, the identification code shown on the plate or label must be easily replaceable using commonly available tools.

§ 95.909 Marketing limitations.

No device may be marketed or sold in the United States as a PLB or Personal Locator Beacon unless it complies with the requirements of subpart K of this part.

Subpart L—Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBUs)

§ 95.1001 Scope.

This subpart sets out the regulations governing Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBUs) in the 5850–5925 MHz band. DSRCS Roadside Units (RSUs) are authorized under part 90 of this chapter and DSRCS, RSU, and OBU are defined in § 90.7 of this chapter. General information pertaining to this service is also contained in subparts A and B of this part.

§ 95.1003 ASTM E2213–03 DSRC Standard.

On-Board Units operating in the 5850–5925 MHz band shall comply with the following technical standards, which are incorporated by reference: American Society for Testing and Materials (ASTM) E2213–03, Standard Specification for Telecommunications and Information Exchange Between Roadside and Vehicle Systems—5 GHz Band Dedicated Short-range Communications (DSRC) Medium Access Control (MAC) and Physical Layer (PHY) Specifications published September 2003 (ASTM E2213–03 DSRC Standard). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554 or at the Office of the Federal Register, 800 North Capital Street, NW., Suite 700, Washington, DC 20001. For information on the availability of this material at the Office of the Federal Register, call 202 741–6000 or send an e-mail to *fedreg.info@nara.gov.* Copies of the ASTM E2213–03 DSRC Standard can be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959. Copies may also be obtained from ASTM via the Internet at *http://www.astm.org.*

§ 95.1005 Channel designations of frequencies available.

(a) The following table indicates the channel designations of frequencies available for assignment to eligible applicants within the 5850–5925 MHz band for On-Board Units (OBUs):

Channel No.	Channel use	Frequency range (MHz)
170	Reserved	5850–5855
172	Service Channel	5855–5865
174	Service Channel	5865–5875
175	Service Channel [FN1]	5865–5885
176	Service Channel	5875–5885
178	Control Channel	5885–5895
180	Service Channel	5895–5905
181	Service Channel [FN1]	5895–5915
182	Service Channel	5905–5915
184	Service Channel	5915–5925

FN1 Channel Nos. 174/176 may be combined to create a twenty megahertz channel, designated Channel No. 175. Channels 180/182 may be combined to create a twenty megahertz channel designated Channel No. 181.

(b) Except as provided in paragraph (c) of this section, non-reserve DSRCS channels are available on a shared basis only for use in accordance with the Commission's rules. All licensees shall cooperate in the selection and use of channels in order to reduce interference. This includes monitoring for communications in progress and any other measures as may be necessary to minimize interference. Licensees suffering or causing harmful interference within a communications zone are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height and direction, additional filtering, or area or hours of operation of the stations concerned. Further, the use of any channel at a given geographical location may be denied when, in the judgment of the Commission, its use at that location is not in the public interest; the use of any channel may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization.

(c) *Safety/public safety priority.* The following access priority governs all DSRCS operations:

(1) Communications involving the safety of life have access priority over all other DSRCS communications; and

(2) Subject to a Control Channel priority system management strategy (*see* ASTM E2213–03 DSRC Standard at section 4.1.1.2(4)) DSRCS communications involving public safety have access priority over all other DSRC communications not listed in paragraph (c)(1) of this section. On-Board Units (OBUs) operated by state or local governmental entities are presumptively engaged in public safety priority communications.

(d) Non-priority communications. DSRCS communications not listed in paragraph (c) of this section are non-priority communications. If a dispute arises concerning non-priority DSRCS–OBU communications with Roadside Units (RSUs), the provisions of § 90.377(e) and (f) of this chapter will apply. Disputes concerning non-priority DSRCS–OBU communications not associated with RSUs are governed by paragraph (b) of this section.

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Federal Register

Vol. 75, No. 149

Wedneday, August 4, 2010

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FEDERAL REGISTER PAGES AND DATE, AUGUST

45047–45474 2
45475–46836 3
46837–47170 4

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8544 46835

5 CFR

Proposed Rules:
532 45557

7 CFR

Proposed Rules:
357 46859

12 CFR

226 46837

14 CFR

25 ..... 46838, 46840
97 ..... 45047, 45049

Proposed Rules:
39 ..... 45075, 45558, 45560, 46861, 46864, 46868, 46873
234 45562
244 45562
250 45562
259 45562
399 45562

15 CFR

734 45052
748 45052

17 CFR

Proposed Rules:
210 47064
239 47064
240 47064
249 47064
270 47064
274 47064

22 CFR

40 45475
42 45475
120 46843

26 CFR

53 46844
54 46844

30 CFR

Proposed Rules:
938 46877

31 CFR

Proposed Rules:
50 45563

33 CFR

117 45477
165 ..... 45055, 45478

40 CFR

52 ..... 45057, 45480, 45483, 46845
81 45485
180 46847
272 45489

Proposed Rules:
51 ..... 45075, 45210
52 ..... 45075, 45076, 45080, 45082, 45210, 45568, 46880
72 ..... 45075, 45210
78 ..... 45075, 45210
81 ..... 45571, 46881
97 ..... 45075, 45210
112 45572
131 45579
272 45583

42 CFR

410 45700
416 45700
419 45700

Proposed Rules:
410 46169
411 46169
412 46169
413 46169
416 46169
419 46169
482 46169
489 46169

45 CFR

Proposed Rules:
170 45584

47 CFR

1 45494
2 45058
25 45058
27 45058
97 46854
101 45496

Proposed Rules:
1 ..... 45590, 47142
27 47142
73 46885
95 47142

48 CFR

205 45072
207 45072
208 45072
209 45072
211 45072
215 45072
216 45072
217 45072
219 45072
225 45072
228 45072
232 45072
237 45072
246 45072
250 45072

252.....45072

49 CFR

Proposed Rules:
192.....45591

50 CFR

17.....45497
218.....45527

Proposed Rules:
17.....45592, 46844
665.....45085

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 5849/P.L. 111–214

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (July 30, 2010; 124 Stat. 2346)

S. 3372/P.L. 111–215

To modify the date on which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels. (July 30, 2010; 124 Stat. 2347)

H.R. 5900/P.L. 111–216

Airline Safety and Federal Aviation Administration Extension Act of 2010 (Aug. 1, 2010; 124 Stat. 2348)

Last List August 3, 2010

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