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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 11, 2013
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

Contents

Federal Register

Vol. 78, No. 99

Wednesday, May 22, 2013

Separate Parts In This Issue

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.

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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.

3 CFR

Proclamations:

8823 (Superseded by Proc. 8984) 30731
8981.....30725
8982.....30727
8983.....30729
8984.....30731

Administrative Orders:

Memorandums:
Memorandum of May 17, 2013.....30733

12 CFR

1005.....30662

14 CFR

Proposed Rules:

39.....30243

18 CFR

Proposed Rules:

40.....30245

20 CFR

Proposed Rules:

404.....30249
416.....30249

21 CFR

520.....30197

30 CFR

1202.....30198
1204.....30198
1206.....30198
1207.....30198
1210.....30198
1218.....30198
1220.....30198
1243.....30198
1290.....30198

40 CFR

52 (2 documents) 30208, 30209
180.....30213

45 CFR

152.....30218

47 CFR

14.....30226

48 CFR

204 (2 documents) 30231, 30232
209.....30233
227.....30233
252 (2 documents) 30232, 30233

49 CFR

Proposed Rules:

109.....30258

50 CFR

679.....30242

Rules and Regulations

Federal Register
Vol. 78, No. 99
Wednesday, May 22, 2013

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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2013–N–0002]

Oral Dosage Form New Animal Drugs; Clindamycin; Enrofloxacin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during April 2013. FDA is also informing the public of the availability of summaries for the basis of approval and of environmental review documents, where applicable.

DATES: This rule is effective May 22, 2013.

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

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during April 2013, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the CVM FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

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

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING APRIL 2013

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR Section	FOIA summary	NEPA review
200–538 ...	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	CLINDAMED (clindamycin hydrochloride) Oral Drops.	Original approval as a generic copy of NADA 135–940.	520.447	yes	CE [1].
200–551 ...	Putney, Inc., 400 Congress St., Suite 200, Portland, ME 04101.	Enrofloxacin Flavored Tablets.	Original approval as a generic copy of NADA 140–441.	520.812	yes	CE [1].

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.447 [Amended]

■ 2. In paragraph (b) of § 520.447, remove ''and'' and add '', and 061623'' after ''058829''.

■ 3. Revise § 520.812 to read as follows:

§ 520.812 Enrofloxacin.

(a) *Specifications.* Each tablet contains 22.7, 68.0, or 136.0 milligrams (mg) of enrofloxacin.

(b) *Sponsors.* See Nos. 000859 and 026637 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Administer orally as a single, daily dose or divided into two equal doses at 12-hour intervals.

(i) *Dogs.* 5 to 20 mg per kilogram (/kg) (2.27 to 9.07 mg per pound (/lb)) of body weight.

(ii) *Cats.* 5 mg/kg (2.27 mg/lb) of body weight.

(2) *Indications for use.* For the management of diseases associated with bacteria susceptible to enrofloxacin.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food-producing animals.

Dated: May 16, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–12134 Filed 5–21–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1202, 1204, 1206, 1207, 1210, 1218, 1220, 1243, and 1290

[Docket No. ONRR–2011–0022] [DS63610300 DR2PS0000.CH7000 134D0102R2]

RIN 1012–AA09

Amendments to ONRR's Remaining OMB-Approved Forms and Acronyms To Reflect Reorganization

AGENCY: Office of Natural Resources Revenue (ONRR), Office of the Secretary, Interior.

ACTION: Direct final rule.

SUMMARY: On May 19, 2010, the Secretary of the Interior separated and reassigned responsibilities previously performed by the former Minerals Management Service (MMS) to three separate organizations. As part of this reorganization, on October 1, 2010, the Secretary established the Office of Natural Resources Revenue (ONRR) within the Office of the Assistant Secretary—Policy, Management and Budget (PMB). At the same time, ONRR initiated a CFR chapter reorganization. This direct final rule amends the remaining Office of Management and Budget (OMB) approved form numbers for information collection requirements and corresponding technical corrections to part and position titles, agency names, and acronyms.

DATES: This rule is effective on May 22, 2013.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Armand Southall, Regulatory Specialist, ONRR, telephone (303) 231–3221; or email *armand.southall@onrr.gov.* You may obtain a paper copy of this rule by contacting Mr. Southall by phone or email.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 2010, by Secretarial Order No. 3299, the Secretary of the Department of the Interior (Secretary) announced the restructuring of MMS. On June 18, 2010, by Secretarial Order No. 3302, the Secretary announced the name change of MMS to the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). By these orders, the Secretary separated and reassigned the responsibilities previously performed by the former MMS to three separate organizations: the Office of Natural Resources Revenue, the Bureau of Ocean Energy Management (BOEM), and the Bureau of Safety and Environmental Enforcement (BSEE). ONRR is responsible for the royalty management functions of the former MMS's Minerals Revenue Management Program.

II. Explanation of Amendments

In this direct final rule, ONRR merely amends its remaining OMB-approved form numbers for information collection requests listed in certain parts of title 30 CFR, chapter XII. ONRR does not make any substantive changes in this direct final rule to the regulations or requirements in chapter XII. We also merely make any necessary corresponding technical corrections to part and position titles, agency names, and acronyms. This rule will not have any effect on the rights, obligations, or interests of any affected parties. Thus, under 5 U.S.C. 553(b)(B), ONRR, for good cause, finds that notice and comment on this rule are unnecessary and contrary to the public interest. Additionally, because this document is a ''rule(. . .) of agency organization, procedure or practice'' under 5 U.S.C. 553(b)(A), this document is, in any event, exempt from the notice and comment requirements of 5 U.S.C. 553(b). Lastly, because this non-substantive rule makes no changes to the legal obligations or rights of any affected parties, and because it is in the public interest for this rule to be effective as soon as possible, ONRR finds that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register** rather than 30 days after publication.

As noted, this direct final rule amends the following 30 CFR parts and the related existing subparts:

- Part 1202—Royalties
- Part 1204—Alternatives for Marginal Properties
- Part 1206—Product Valuation
- Part 1207—Sales Agreements or Contracts Governing the Disposal of Lease Products
- Part 1210—Forms and Reports
- Part 1218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government
- Part 1220—Accounting Procedures For Determining Net Profit Share Payment For Outer Continental Shelf Oil and Gas Leases
- Part 1243—Suspensions Pending Appeal and Bonding—Office of Natural Resources Revenue
- Part 1290—Appeal Procedures

The following sections explain further these amendments to the regulations:

Subchapter A—Natural Resources Revenue

A. Part 1202—Royalties

We are revising part 1202, subparts C, D, and H.

Acronyms, Agency Names, OMB-approved Form Numbers, and Section Numbers. We are amending sections to replace ''Bureau of Ocean Energy Management, Regulations, and Enforcement'' with ''Bureau of Ocean Energy Management'' or ''Bureau of Safety and Environmental Enforcement'' and ''BOEMRE'' with ''BOEM'' or ''BSEE,'' respectively. We also are amending our OMB-approved form numbers, listed in this part, to replace ''MMS'' with ''ONRR'' as we complete our form update process. In addition, we are correcting a misprinted section number from § 202.350 to § 1202.350 due to reorganizing and repromulgating our regulations in chapter XII, title 30 CFR.

B. Part 1204—Alternatives for Marginal Properties

We are revising part 1204, subpart C.

Acronym, OMB-approved Form Numbers, and Section Numbers. We are updating this subpart to replace references of ''BOEMRE'' with ''BOEM.'' We also are amending OMB-approved form numbers, listed in this part, to replace ''MMS'' with ''ONRR'' as we complete our form-update process. We also are revising § 1204.215 in Plain Language to meet the criteria of Executive Orders 12866 and 12988, and the Presidential Memorandum dated June 1, 1998, which require us to write all rules so that the public can read them more clearly and consistently. This revision makes no substantive changes as previously stated in Section II, Explanation of Amendments, of this rule. In addition, we are correcting referenced section numbers due to reorganizing and repromulgating our regulations in chapter XII, title 30 CFR.

C. Part 1206—Product Valuation

We are revising part 1206, subparts B, C, D, E, F, H, and J.

Acronyms, Definitions, OMB-approved Form Numbers, and Section Numbers. We are amending the OMB-approved form numbers, listed in this part, to replace ''MMS'' with ''ONRR'' as we complete our form-update process. We also are amending this part to replace references of ''BOEMRE'' with ''BOEM'' or ''BSEE,'' depending on the context. We also are adding new definitions, ''BOEM'' and ''BSEE,'' into §§ 1206.101 and 1206.151 and amending § 1206.364(d) to remove ''subpart B.'' In addition, we are

correcting referenced part and section numbers due to reorganizing and repromulgating our regulations in chapter XII, title 30 CFR.

D. Part 1207—Sales Agreements or Contracts Governing the Disposal of Lease Products

We are revising part 1207, subpart A.

Acronyms, Addresses, Agency Names, and Sections. In paragraph (a) of § 1207.1, we removed the first sentence and replaced it with sentences rewritten in Plain Language. Also, in paragraph (b) of § 1207.1, we are rewriting the paragraph in Plain Language to include ONRR's address and the OMB control number. We also are amending sections to replace ''Bureau of Ocean Energy Management, Regulations, and Enforcement (BOEMRE)'' with ''Bureau of Ocean Energy Management (BOEM)'' and ''BOEMRE'' with ''BOEM.'' In addition, we are adding ''Bureau of Safety and Environmental Enforcement'' to § 1207.5 so that BSEE will receive copies of all sales contracts, agreements, etc.

E. Part 1210—Forms and Reports

We are revising part 1210, subparts A, B, C, D, E, and H.

OMB-approved Form Numbers. Currently, 30 CFR 1210.10 contains a list of information collections that OMB approved prior to ONRR's separation from BOEMRE. In this rule, we are providing, under 30 CFR 1210.10, an updated information collection requests (ICR) table showing the OMB-approved form numbers for current ICRs. We are amending the OMB-approved form numbers, listed in this part, to replace ''MMS'' with ''ONRR'' as we complete our form-update process. We also are correcting § 1210.205 to label the first paragraph as ''(a).'' In addition, we are revising § 1210.353 in Plain Language.

F. Part 1218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

We are revising part 1218, subparts A, B, D, E, and H.

Acronyms, Agency Name, OMB-approved Form Numbers, and Section Numbers. We are amending sections to replace ''BOEMRE'' with ''Bureau of Safety and Environmental Enforcement (BSEE)'' and ''BSEE.'' We also are amending the form numbers, listed in this part, to replace ''MMS'' with ''ONRR'' as we complete our form-update process. In addition, we are correcting referenced section numbers due to reorganizing and repromulgating our regulations in chapter XII, title 30 CFR.

G. Part 1220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases

Acronyms, Agency names, and Definition. We are amending subparagraph (1) in the definition of *Capital recovery period* in § 1220.002 to replace ''Bureau of Ocean Energy Management, Regulations, and Enforcement (BOEMRE)'' with ''Bureau of Ocean Energy Management (BOEM).'' We also are amending subparagraph (3) in the definition of *Capital recovery period* in § 1220.002 to replace ''Director'' with ''BOEM Director.'' We also are deleting the definition of *Director* in § 1220.002 because we will list and identify three different Directors in the Department of the Interior (DOI) who we reference in this part. In addition, we are amending sections to replace ''Director'' with ''BOEM Director'' or ''Bureau of Safety and Environmental Enforcement (BSEE) Director'' or ''BSEE Director'' or ''Office of Natural Resources Revenue (ONRR) Director'' or ''ONRR Director.''

H. Part 1243—Suspensions Pending Appeal And Bonding—Office of Natural Resources Revenue

We are revising part 1243, subpart A.

Acronym, Agency name, and Definition. We are amending the definition of ''*ONRR bond-approving officer''* in § 1243.3 to replace ''Associate Director for Minerals Revenue Management'' with ''Deputy Director for Office of Natural Resources Revenue'' and ''Associate Director'' with ''Deputy Director.'' We also are amending § 1243.8 to replace ''BOEMRE'' with ''Bureau of Ocean Energy Management.''

Subchapter B—Appeals

I. Part 1290—Appeal Procedures

We are amending part 1290 by updating referenced section text to replace ''subpart'' with ''part'' due to reorganizing and repromulgating our regulations in chapter XII, title 30 CFR.

III. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

DOI certifies that this direct final rule does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This direct final rule will impact large and small entities but will not have a significant economic effect on either because this is a technical rule renumbering already approved OMB control numbers, renaming certain forms, and correcting corresponding part and position titles, agency names, and acronyms for ONRR's information collection requirements (ICRs) listed in title 30 CFR, chapter XII, regulations.

Small Business Regulatory Enforcement Fairness Act

This direct final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This direct final rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This is only a technical rule renumbering already approved OMB control numbers, renaming certain forms, and correcting corresponding part and position titles, agency names, and acronyms for ONRR's information collection requirements (ICRs) listed in title 30 CFR, chapter XII, regulations.

Unfunded Mandates Reform Act

This direct final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This direct final rule does not have a

significant or unique effect on State, local, or tribal governments or the private sector. We are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) requires because this is a technical rule renumbering already approved OMB control numbers, renaming certain forms, and correcting corresponding part and position titles, agency names, and acronyms for ONRR's ICRs.

Takings (E.O. 12630)

Under the criteria in section 2 of Executive Order 12630, this direct final rule does not have any significant takings implications. This direct final rule applies to Outer Continental Shelf (OCS), Federal onshore, and Indian onshore leases. It does not apply to private property. This direct final rule does not require a Takings Implication Assessment.

Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this direct final rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This is a technical rule renumbering already approved OMB control numbers, renaming certain forms, and correcting corresponding part and position titles, agency names, and acronyms for ONRR's ICRs listed in title 30 CFR, chapter XII, regulations. This direct final rule does not require a Federalism summary impact statement.

Civil Justice Reform (E.O. 12988)

This direct final rule complies With the requirements of E. O. 12988 for the reasons outlined in the following paragraphs.

a. This rule meets the criteria of section 3(a), which requires that we review all regulations to eliminate errors and ambiguity and to write them to minimize litigation.

b. This rule meets the criteria of section 3(b)(2), which requires that we write all regulations in clear language with clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Department policy)

DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. Under DOI's consultation policy and the criteria in Executive Order 13175, we have evaluated this direct final rule and determined that it has no substantial direct effects on federally recognized Indian tribes. Therefore, we are not required to complete a consultation under DOI's tribal consultation policy.

Paperwork Reduction Act

This direct final rule does not contain any information collection requirements and does not require a submission to OIRA under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D: ''(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.'' We have also determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. This rule will not alter in any material way natural resource exploration, production, or transportation.

Information Quality Act

In accordance with the Information Quality Act, DOI has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on DOI's Web site at *http://www.doi.gov/ocio/information_management/iq.cfm.*

Effects on the Energy Supply (E.O. 13211)

This direct final rule is not a significant energy action under the definition in E.O. 13211, and, therefore, it does not require a Statement of Energy Effects.

List of Subjects

30 CFR Part 1202

Coal, Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Sulfur.

30 CFR Part 1204

Accounting and auditing relief, Barrels of oil equivalent (BOE), Continental shelf, Federal lease, Marginal property, Mineral royalties, Royalty prepayment, Royalty relief.

30 CFR Part 1206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1207

Continental shelf, Government contracts, Indians—lands, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1210

Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Sulfur.

30 CFR part 1218

Continental shelf, Electronic funds transfers, Geothermal energy, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1220

Accounting, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1243

Administrative practice and procedure, Government contracts, Mineral royalties, Public lands—mineral resources.

30 CFR Part 1290

Administrative practice and procedure.

Dated: May 9, 2013.

Rhea Suh,

Assistant Secretary, Policy, Management and Budget.

Authority and Issuance

For the reasons discussed in the preamble, under the authority provided by the Reorganization Plan No. 3 of 1950 (64 Stat. 1262) and Secretarial Order Nos. 3299 and 3302, ONRR amends parts 1202, 1204, 1206, 1207, 1210, 1218, 1220, 1243, and 1290 of title 30 CFR, chapter XII, subchapters A and B, as follows:

PART 1202—ROYALTIES

■ 1. The authority citation for part 1202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* 1801 *et seq.*

§ 1202.350 [Corrected]

■ 2. Correctly revise the section designation for § 201.350 to read § 1202.350

§§ 1202.100, 1202.150, 1202.151, 1202.350, 1202.353 [Amended]

■ 3. In the following table, amend part 1202 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1202.100(b)(1)	Bureau of Ocean Energy Management, Regulations, and Enforcement (BOEMRE).	Bureau of Safety and Environmental Enforcement (BSEE).
§ 1202.100(b)(2)	BOEMRE	BSEE.
§ 1202.100(c)	BOEMRE	BSEE.
§ 1202.150(b)(1)	BOEMRE	BSEE.
§ 1202.150(b)(2)	BOEMRE	BSEE.
§ 1202.150(c)	BOEMRE	BSEE.
§ 1202.151(c)	BOEMRE	Bureau of Ocean Energy Management (BOEM).
§ 1202.353(a)	MMS–2014	ONRR–2014.
§ 1202.353(b)	MMS–2014	ONRR–2014.
§ 1202.353(c)	MMS–2014	ONRR–2014.
§ 1202.353(d)	MMS–2014	ONRR–2014.

PART 1204—ALTERNATIVES FOR MARGINAL PROPERTIES

■ 4. The authority citation for part 1204 continues to read as follows:

Authority: 30 U.S.C. 1701 *et seq.*

§§ 1204.202, 1204.206, and 1204.210 [Amended]

■ 5. In the following table, amend part 1204 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1204.202(b)(3)	MMS–2014	ONRR–2014.
§ 1204.202(b)(4)	MMS–2014	ONRR–2014.
§ 1204.202(b)(5)	MMS–2014	ONRR–2014.
§ 1204.202(d)(2)	MMS–2014	ONRR–2014.
§ 1204.202(e)(2)	§ 218.54	§ 1218.54.
§ 1204.206 introductory text	§ 204.1205(b)	§ 1204.205(b).
§ 1204.210 introductory text	BOEMRE	BOEM.
§ 1204.210(b)	BOEMRE	BOEM.
§ 1204.210(c) (two times)	BOEMRE	BOEM.

§ 1204.215 [Amended]

■ 6. Revise § 1204.215 to read as follows:

§ 1204.215 Are the information collection requirements in this subpart approved by the Office of Management and Budget (OMB)?

OMB approved the information collection requirements contained in this subpart under 44 U.S.C. 3501 *et seq.* ONRR identifies the approved OMB control number in 30 CFR 1210.10.

PART 1206—PRODUCT VALUATION

■ 7. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

§§ 1206.51, 1206.56, 1206.57, 1206.101, 1206.109, 1206.110, 1206.111, 1206.112, 1206.114, 1206.115, 1206.116, 1206.117, 1206.119, 1206.120, 1206.151, 1206.152, 1206.153, 1206.154, 1206.156, 1206.157, 1206.158, 1206.159, 1206.172, 1206.174, 1206.177, 1206.178, 1206.180, 1206.251, 1206.254, 1206.257, 1206.259, 1206.262, 1206.351, 1206.353, 1206.354, 1206.356, 1206.358, 1206.359, 1206.456, 1206.458, and 1206.461 [Amended]

■ 8. In the following table, amend part 1206 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1206.51, definition of *Net*	MMS–2014	ONRR–2014.
§ 1206.56(b)(2)	MMS–4393	ONRR–4393.
§ 1206.57(a)(1)(i) (two times)	MMS–4110	ONRR–4110.
§ 1206.57(b)(1) (two times)	MMS–4110	ONRR–4110.
§ 1206.57(c)(1)(i) (two times)	MMS–4110	ONRR–4110.
§ 1206.57(c)(1)(i) (two times)	MMS–2014	ONRR–2014.
§ 1206.57(c)(1)(ii)	MMS–4110	ONRR–4110.
§ 1206.57(c)(1)(iii)	MMS–4110	ONRR–4110.
§ 1206.57(c)(2)(i) (two times)	MMS–4110	ONRR–4110.

Amend	By removing the reference to:	And adding in its place:
§ 1206.57(c)(2)(i) (two times)	MMS–2014	ONRR–2014.
§ 1206.57(c)(2)(ii)	MMS–4110	ONRR–4110.
§ 1206.57(c)(2)(iii) (three times)	MMS–4110	ONRR–4110.
§ 1206.57(c)(2)(iv)	MMS–4110	ONRR–4110.
§ 1206.57(c)(2)(vi)	MMS–4110	ONRR–4110.
§ 1206.57(c)(4)	MMS–2014	ONRR–2014.
§ 1206.57(d)(1)	MMS–2014	ONRR–2014.
§ 1206.57(e)(1) (two times)	MMS–2014	ONRR–2014.
§ 1206.101, definition of *Field*	ONRR	BOEM.
§ 1206.101, definition of *Gathering*	ONRR	BSEE.
§ 1206.101, definition of *Netting*	MMS–2014	ONRR–2014.
§ 1206.109(c)(2)	MMS–4393	ONRR–4393.
§ 1206.109(e)	MMS–2014	ONRR–2014.
§ 1206.110(e)(1)	MMS–2014	ONRR–2014.
§ 1206.110(e)(2)	MMS–2014	ONRR–2014.
§ 1206.110(g)	MMS–2014	ONRR–2014.
§ 1206.111(l)(2)	MMS–2014	ONRR–2014.
§ 1206.111(l)(3)	MMS–2014	ONRR–2014.
§ 1206.112(c)(1)	BOEMRE	BSEE.
§ 1206.114	MMS–2014	ONRR–2014.
§ 1206.115(a)	MMS–2014	ONRR–2014.
§ 1206.116(a)	MMS–2014	ONRR–2014.
§ 1206.116(b)	MMS–2014	ONRR–2014.
§ 1206.117(a)	MMS–2014	ONRR–2014.
§ 1206.117(a)	§ 218.54	§ 1218.54.
§ 1206.117(b)	MMS–2014	ONRR–2014.
§ 1206.119(a)	BOEMRE	BSEE.
§ 1206.119(b)	BOEMRE	BSEE.
§ 1206.119(c)	BOEMRE	BSEE.
§ 1206.120	BOEMRE	BOEM.
§ 1206.120	BOEMRE	BOEM.
§ 1206.151, definition of *Field*	BOEMRE	BOEM.
§ 1206.151, definition of *Gathering*	BOEMRE	BSEE.
§ 1206.151, definition of *Netting*	MMS–2014	ONRR–2014.
§ 1206.152(e)(3)	MMS–2014	ONRR–2014.
§ 1206.153(e)(3)	MMS–2014	ONRR–2014.
§ 1206.154(a)(1)	BOEMRE	BSEE.
§ 1206.154(a)(2)	BOEMRE	BSEE.
§ 1206.154(d)(1)	BOEMRE	BSEE.
§ 1206.156(c)(3)	MMS–4393	ONRR–4393.
§ 1206.156(d)	MMS–2014	ONRR–2014.
§ 1206.157(a)(1)(i)	ONRR'	ONRR's.
§ 1206.157(a)(1)(i)	MMS–2014	ONRR–2014.
§ 1206.157(a)(3)	MMS–2014	ONRR–2014.
§ 1206.157(b)(1)	MMS–2014	ONRR–2014.
§ 1206.157(b)(4)	MMS–2014	ONRR–2014.
§ 1206.157(c)(1)(i)	MMS–2014	ONRR–2014.
§ 1206.157(c)(2)(i)	MMS–2014	ONRR–2014.
§ 1206.157(d)(1)	MMS–2014	ONRR–2014.
§ 1206.157(e)(1) (two times)	MMS–2014	ONRR–2014.
§ 1206.157(e)(2)	MMS–2014	ONRR–2014.
§ 1206.157(e)(3)	MMS–2014	ONRR–2014.
§ 1206.157(f)(1) (two times)	MMS–2014	ONRR–2014.
§ 1206.158(c)(3)	MMS–4393	ONRR–4393.
§ 1206.158(e)	MMS–2014	ONRR–2014.
§ 1206.159(a)(1)(i)	MMS–2014	ONRR–2014.
§ 1206.159(a)(3)	MMS–2014	ONRR–2014.
§ 1206.159(b)(1)	MMS–2014	ONRR–2014.
§ 1206.159(c)(1)(i)	MMS–2014	ONRR–2014.
§ 1206.159(c)(2)(i)	MMS–2014	ONRR–2014.
§ 1206.159(d)(1)	MMS–2014	ONRR–2014.
§ 1206.159(e)(1) (two times)	MMS–2014	ONRR–2014.
§ 1206.159(e)(2)	MMS–2014	ONRR–2014.
§ 1206.159(e)(3)	MMS–2014	ONRR–2014.
§ 1206.172(b)(1)(ii)	MMS–4410	ONRR–4410.
§ 1206.172(e)(4)(i)	30 CFR 206.172(d)	30 CFR 1206.172(d).
§ 1206.172(e)(6)(i)	MMS–4411	ONRR–4411.
§ 1206.172(e)(6)(ii)	MMS–2014	ONRR–2014.
§ 1206.172(e)(6)(iii)	MMS–4411	ONRR–4411.
§ 1206.174(a)(4)(ii) (two times)	MMS–2014	ONRR–2014.
§ 1206.174(a)(4)(iii)	MMS–2014	ONRR–2014.
§ 1206.177(c)(3)	MMS–4393	ONRR–4393.
§ 1206.178(a)(1)(i)	MMS–2014	ONRR–2014.
§ 1206.178(b)(1)(ii)	MMS–4295	ONRR–4295.

Amend	By removing the reference to:	And adding in its place:
§ 1206.178(d)(2)	MMS–2014	ONRR–2014.
§ 1206.178(e) (two times)	MMS–2014	ONRR–2014.
§ 1206.178(f)(1) (two times)	MMS–2014	ONRR–2014.
§ 1206.180(a)(1)(i)	MMS–2014	ONRR–2014.
§ 1206.180(b)(1)(ii)	MMS–4109	ONRR–4109.
§ 1206.180(c)(2)	MMS–2014	ONRR–2014.
§ 1206.180(d) (two times)	MMS–2014	ONRR–2014.
§ 1206.251, definition of *Netting*	MMS–4430	ONRR–4430.
§ 1206.254	30 CFR part 210—Forms and Reports.	30 CFR part 1210—Forms and Reports.
§ 1206.257(d)(3)	MMS–4430	ONRR–4430.
§ 1206.259(a)(1)	ONRR'	ONRR's.
§ 1206.259(a)(1)	MMS–4430	ONRR–4430.
§ 1206.259(b)(1)	MMS–4430	ONRR–4430.
§ 1206.259(c)(1)(i)	MMS–4430	ONRR–4430.
§ 1206.259(c)(2)(i)	MMS–4430	ONRR–4430.
§ 1206.259(d)(1)	MMS–4430	ONRR–4430.
§ 1206.259(e)(1)	ONNR	ONRR.
§ 1206.259(e)(2)	ONNR	ONRR.
§ 1206.262(a)(1)	MMS–4430	ONRR–4430.
§ 1206.262(b)(1)	MMS–4430	ONRR–4430.
§ 1206.262(c)(1)(i)	MMS–4430	ONRR–4430.
§ 1206.262(c)(2)(i)	MMS–4430	ONRR–4430.
§ 1206.262(d)(1)	MMS–4430	ONRR–4430.
§ 1206.262(e)(1) (two times)	MMS–4430	ONRR–4430.
§ 1206.262(e)(2)	MMS–4430	ONRR–4430.
§ 1206.351, definition of *Byproduct transportation allowance.*	MMS–2014	ONRR–2014.
§ 1206.353(m)(2)	MMS–2014	ONRR–2014.
§ 1206.354(m)(2)	MMS–2014	ONRR–2014.
§ 1206.356(b)(1)(ii)	ONNR	ONRR.
§ 1206.358(d)(1)	MMS–2014	ONRR–2014.
§ 1206.359(l)(2)	MMS–2014	ONRR–2014.
§ 1206.456(b)(5)	ONRR'	ONRR's.
§ 1206.456(d)(1)	ONRR'	ONRR's.
§ 1206.456(d)(3)	MMS–4430	ONRR–4430.
§ 1206.456(e)	30 CFR 218.202	30 CFR 1218.202.
§ 1206.458(a)(1) (two times)	MMS–4292	ONRR–4292.
§ 1206.458(b)(1) (two times)	MMS–4292	ONRR–4292.
§ 1206.458(c)(1)(i) (two times)	MMS–4292	ONRR–4292.
§ 1206.458(c)(1)(i) (two times)	MMS–4430	ONRR–4430.
§ 1206.458(c)(1)(ii)	MMS–4292	ONRR–4292.
§ 1206.458(c)(1)(iii)	MMS–4292	ONRR–4292.
§ 1206.458(c)(2)(i) (two times)	MMS–4292	ONRR–4292.
§ 1206.458(c)(2)(i) (two times)	MMS–4430	ONRR–4430.
§ 1206.458(c)(2)(ii)	MMS–4292	ONRR–4292.
§ 1206.458(c)(2)(iii) (three times)	MMS–4292	ONRR–4292.
§ 1206.458(c)(2)(iv)	MMS–4292	ONRR–4292.
§ 1206.458(c)(2)(vi)	Forms MMS–4292	Form ONRR–4292.
§ 1206.458(c)(4)	MMS–4430	ONRR–4430.
§ 1206.458(d)(1)	MMS–4430	ONRR–4430.
§ 1206.458(e)(1)	MMS–4430	ONRR–4430.
§ 1206.458(e)(2)	MMS–4430	ONRR–4430.
§ 1206.461(a)(1)	ONRR'	ONRR's.
§ 1206.461(a)(1) (two times)	MMS–4293	ONRR–4293.
§ 1206.461(b)(1) (two times)	MMS–4293	ONRR–4293.
§ 1206.461(c)(1)(i)	MMS–4293	ONRR–4293.
§ 1206.461(c)(1)(i)	MMS–4430	ONRR–4430.
§ 1206.461(c)(1)(ii)	MMS–4293	ONRR–4293.
§ 1206.461(c)(1)(iii)	MMS–4293	ONRR–4293.
§ 1206.461(c)(2)(i)	MMS–4293	ONRR–4293.
§ 1206.461(c)(2)(i)	MMS–4430	ONRR–4430.
§ 1206.461(c)(2)(ii)	MMS–4293	ONRR–4293.
§ 1206.461(c)(2)(iii) (three times)	MMS–4293	ONRR–4293.
§ 1206.461(c)(2)(iv)	MMS–4293	ONRR–4293.
§ 1206.461(c)(2)(vi)	MMS–4293	ONRR–4293.
§ 1206.461(c)(4)	MMS–4430	ONRR–4430.
§ 1206.461(d)(1)	MMS–4430	ONRR–4430.
§ 1206.461(e)(1)	MMS–4430	ONRR–4430.
§ 1206.461(e)(2)	MMS–4430	ONRR–4430.

■ 9. Amend § 1206.101 by adding in alphabetical order the definitions of ''BOEM'' and ''BSEE'' to read as follows:

§ 1206.101 What definitions apply to this subpart?

* * * * *

BOEM means the Bureau of Ocean Energy Management of the Department of the Interior.

BSEE means the Bureau of Safety and Environmental Enforcement of the Department of the Interior.

* * * * *

■ 10. Amend § 1206.151 by adding in alphabetical order the definitions of ''BOEM'' and ''BSEE'' to read as follows:

§ 1206.151 Definitions.

* * * * *

BOEM means the Bureau of Ocean Energy Management of the Department of the Interior.

BSEE means the Bureau of Safety and Environmental Enforcement of the Department of the Interior.

* * * * *

§ 1206.364 [Amended]

■ 11. Amend § 1206.364 by removing ''subpart B'' in paragraphs (d)(1) and (2).

PART 1207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

■ 12. The authority citation for part 1207 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 31 U.S.C. 3716 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

■ 13. Revise § 1207.1 to read as follows:

§ 1207.1 Required recordkeeping.

(a) ONRR uses the information collected to determine a proper transportation allowance for the cost of transporting royalty oil from the lease to a delivery point remote from the lease. The information is required so that the lessee may obtain a benefit under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* ONRR identifies the approved OMB control number in 30 CFR 1210.10.

(b) Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012–0002, P.O. Box 25165, Denver, CO 80225–0165.

§§ 1207.4 and 1207.5 [Amended]

■ 14. In the following table, amend part 1207 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1207.4(a)	Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE).	Bureau of Ocean Energy Management (BOEM).
§ 1207.5	BOEMRE	BOEM, Bureau of Safety and Environmental Enforcement (BSEE).

PART 1210—FORMS AND REPORTS

■ 15. The authority citation for part 1210 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.;* and 44 U.S.C. 3506(a).

■ 16. In § 1210.10, revise the table to read as follows:

§ 1210.10 What are the OMB-approved information collections?

* * * * *

OMB Control number and short title	Form or information collected
1012–0001, CFO Act of 1992, Accounts Receivable Confirmations.	No form for the following collection: • Accounts receivable confirmations
1012–0002, 30 CFR Parts 1202, 1206, and 1207, Indian Oil and Gas Valuation.	Form ONRR–4109, Gas Processing Allowance Summary Report Form ONRR–4110, Oil Transportation Allowance Report Form ONRR–4295, Gas Transportation Allowance Report Form ONRR–4393, Request to Exceed Regulatory Allowance Limitation [1] Form ONRR–4410, Accounting for Comparison [Dual Accounting] Form ONRR–4411, Safety Net Report
1012–0003, 30 CFR Parts 1227, 1228, and 1229, Delegated and Cooperative Activities with States and Indian Tribes.	No forms for the following collections: • Written delegation proposal to perform auditing and investigative activities • Request for cooperative agreement and subsequent requirements
1012–0004, 30 CFR Parts 1210 and 1212, Royalty and Production Reporting.	Form ONRR–2014, Report of Sales and Royalty Remittance Form ONRR–4054 (Parts A, B, and C), Oil and Gas Operations Report Form ONRR–4058, Production Allocation Schedule Report
1012–0005, 30 CFR Parts 1202, 1204, 1206, and 1210, Federal Oil and Gas Valuation.	Form ONRR–4377, Stripper Royalty Rate Reduction Notification Form ONRR–4393, Request to Exceed Regulatory Allowance Limitation [1] No form for the following collection: • Federal oil valuation support information
1012–0006, 30 CFR Part 1243, Suspensions Pending Appeal and Bonding.	Form ONRR–4435, Administrative Appeal Bond Form ONRR–4436, Letter of Credit Form ONRR–4437, Assignment of Certificate of Deposit No forms for the following collections: • Self bonding • U.S. Treasury securities
1012–0008, 30 CFR Part 1218, Collection of Monies Due the Federal Government.	Form ONRR–4425, Designation Form for Royalty Payment Responsibility

OMB Control number and short title	Form or information collected
1012–0009, 30 CFR Part 1220, OCS Net Profit Share Payment Reporting.	No forms for the following collections: • Cross-lease netting documentation • Indian recoupment approval No form for the following collection: • Net profit share payment information
1012–0010, 30 CFR Parts 1202, 1206, 1210, 1212, 1217, and 1218, Solid Minerals and Geothermal Resources Collections.	Form ONRR–4430, Solid Minerals Production and Royalty Report Form ONRR–4292, Coal Washing Allowance Report Form ONRR–4293, Coal Transportation Allowance Report No forms for the following collections: • Facility data—solid minerals • Sales contracts—solid minerals • Sales summaries—solid minerals

[1] Lessees use Form ONRR–4393 for both Federal and Indian oil and gas leases. The form resides with ICR 1012–0005, but ONRR includes the burden hours for Indian leases in ICR 1012–0002.

■ 17. Amend § 1210.205 by revising paragraph (a) introductory text to read as follows:

(a) *General.* You must submit the following ONRR forms to claim a transportation or washing allowance, as applicable, on Indian coal leases:

* * * * *

§§ 1210.52, 1210.53, 1210.54, 1210.55, 1210.56, 1210.102, 1210.104, 1210.105, 1210.106, 1210.151, 1210.152, 1210.153, 1210.155, 1210.158, 1210.201, 1210.202, 1210.204, and 1210.205 [Amended]

■ 18. In the following table, amend part 1210 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1210.52 introductory text	MMS–2014	ONRR–2014.
§ 1210.53(a)	MMS–2014	ONRR–2014.
§ 1210.53(b)	MMS–2014	ONRR–2014.
§ 1210.54(a)	MMS–2014	ONRR–2014.
§ 1210.55(a) introductory text	MMS–2014	ONRR–2014.
§ 1210.55(a)(2)	MMS–2014	ONRR–2014.
§ 1210.56(a)	MMS–2014	ONRR–2014.
§ 1210.56(c)	MMS–2014	ONRR–2014.
§ 1210.102(a) (two times) introductory text..	MMS–4054	ONRR–4054.
§ 1210.102(a)(1)	MMS–4054	ONRR–4054.
§ 1210.102(b) (two times) introductory text..	MMS–4058	ONRR–4058.
§ 1210.102(b)(1)	MMS–4058	ONRR–4058.
§ 1210.102(b)(2)	MMS–4058	ONRR–4058.
§ 1210.102(b)(2)(vi)	MMS–4058	ONRR–4058.
§ 1210.103(a)	MMS–4054	ONRR–4054.
§ 1210.103(a)	MMS–4058	ONRR–4058.
§ 1210.104(a)	MMS–4054	ONRR–4054.
§ 1210.104(a)	MMS–4058	ONRR–4058.
§ 1210.105(a) introductory text	MMS–4054	ONRR–4054.
§ 1210.105(a) introductory text	MMS–4058	ONRR–4058.
§ 1210.106(c)	MMS–4054	ONRR–4054.
§ 1210.106(c)	MMS–4058	ONRR–4058.
§ 1210.151(a)	MMS–4393	ONRR–4393.
§ 1210.151(b)	MMS–4393	ONRR–4393.
§ 1210.151(c) introductory text	MMS–4393	ONRR–4393.
§ 1210.152(a)(1)	MMS–4110	ONRR–4110.
§ 1210.152(a)(2)	MMS–4109	ONRR–4109.
§ 1210.152(a)(3)	MMS–4295	ONRR–4295.
§ 1210.152(b)	MMS–4110, MMS–4109, and MMS–4295	ONRR–4110, ONRR–4109, and ONRR–4295.
§ 1210.152(c) introductory text	MMS–4110, MMS–4109, and MMS–4295	ONRR–4110, ONRR–4109, and ONRR–4295.
§ 1210.153(a)(1)	MMS–4410	ONRR–4410.
§ 1210.153(a)(2)	MMS–4411	ONRR–4411.
§ 1210.153(b)	MMS–4410 and MMS–4411	ONRR–4410 and ONRR–4411.
§ 1210.153(c)	MMS–4410 and MMS–4411	ONRR–4410 and ONRR–4411.
§ 1210.155(a)	MMS–4377	ONRR–4377.
§ 1210.155(b)	MMS–4377	ONRR–4377.
§ 1210.158(a)	MMS–4425	ONRR–4425.
§ 1210.158(b)	MMS–4425	ONRR–4425.
§ 1210.158(c) introductory text	MMS–4425	ONRR–4425.
§ 1210.201 section heading	MMS–4430	ONRR–4430.
§ 1210.201(a)(1)	MMS–4430	ONRR–4430.
§ 1210.201(a)(2) (three times)	MMS–4430	ONRR–4430.
§ 1210.201(a)(3)	MMS–4430	ONRR–4430.

Amend	By removing the reference to:	And adding in its place:
§ 1210.201(b)(1) (two times)	MMS–4430	ONRR–4430.
§ 1210.201(b)(2)	MMS–4430	ONRR–4430.
§ 1210.201(b)(3)	MMS–4430	ONRR–4430.
§ 1210.201(b)(4) (three times)	MMS–4430	ONRR–4430.
§ 1210.201(c)(1)	MMS–4430	ONRR–4430.
§ 1210.201(c)(3)	MMS–4430	ONRR–4430.
§ 1210.202(a)(2)	MMS–4430	ONRR–4430.
§ 1210.202(b)(1)	MMS–4430	ONRR–4430.
§ 1210.204(b)	MMS–4430	ONRR–4430.
§ 1210.205(a)(1)	MMS–4292	ONRR–4292.
§ 1210.205(a)(2)	MMS–4293	ONRR–4293.
§ 1210.205(c)	MMS–4292 and MMS–4293	ONRR–4292 and ONRR–4293.

■ 19. Revise § 1210.353 to read as follows:

§ 1210.353 Monthly report of sales and royalty.

You must submit a completed Report of Sales and Royalty Remittance (Form ONRR–2014) each month once sales or use of production occur, even though sales may be intermittent, unless ONRR otherwise authorizes. This report is due on or before the last day of the month following the month in which production was sold or used, together with the royalties due to the United States.

PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

■ 20. The authority citation for part 1218 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

§§ 1218.40, 1218.41, 1218.50, 1218.51, 1218.52, 1218.53, 218.53 (1218.153), 1218.154, 1218.201, 1218.203, 1218.500, 1218.520, 1218.540, 1218.560, and 1218.580 [Amended]

■ 21. In the following table, amend part 1218 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1218.40(c)(1)	MMS–4430	ONRR–4430.
§ 1218.40(c)(1)	MMS–2014	ONRR–2014.
§ 1218.40(c)(2)	MMS–2014	ONRR–2014.
§ 1218.41 in Section Heading	MMS–2014	ONRR–2014.
§ 1218.41(a)	MMS–2014, MMS–4430	ONRR–2014, ONRR–4430.
§ 1218.41(b)	MMS–2014, MMS–4430	ONRR–2014, ONRR–4430.
§ 1218.41(c)(1)	MMS–2014	ONRR–2014.
§ 1218.41(d)	MMS–2014	ONRR–2014.
§ 1218.41(d)	MMS–4430	ONRR–4430.
§ 1218.50(d)(1)	MMS–2014	ONRR–2014.
§ 1218.50(d)(2) (two times)	MMS–2014	ONRR–2014.
§ 1218.51(a), definition of *Report*	MMS–2014	ONRR–2014.
§ 1218.51(f)(1)	MMS–2014	ONRR–2014.
§ 1218.51(f)(4)(iii)	MMS–2014	ONRR–2014.
§ 1218.52(a)	MMS–4425	ONRR–4425.
§ 1218.52(c)	MMS–4425	ONRR–4425.
§ 1218.53(a)	MMS–2014	ONRR–2014.
§ 1218.154(a)	BOEMRE	Bureau of Safety and Environmental Enforcement (BSEE).
§ 1218.154(b)	BOEMRE	BSEE.
§ 1218.201(a)	MMS–4430	ONRR–4430.
§ 1218.201(a)	MMS–2014	ONRR–2014.
§ 1218.201(b)	MMS–4430	ONRR–4430.
§ 1218.201(c)	MMS–4430	ONRR–4430.
§ 1218.203(a)	MMS–4430	ONRR–4430.
§ 1218.500	MMS–4444	ONRR–4444.
§ 1218.520, definition of *Addressee of record for service of official correspondence.*	MMS–4444	ONRR–4444.
§ 1218.540(b)(1) (two times)	MMS–4444	ONRR–4444.
§ 1218.540(b)(2)	MMS–4444	ONRR–4444.
§ 1218.560 in Section Heading	MMS–4444	ONRR–4444.
§ 1218.560 (two times)	MMS–4444	ONRR–4444.
§ 1218.580 in Section Heading	MMS–4444	ONRR–4444.
§ 1218.580	MMS–4444	ONRR–4444.

§ 1218.153 [Corrected]

■ 22. Correctly revise the section designation for § 218.153 to read § 1218.153.

§ 1218.500 [Corrected]

■ 23. Correctly revise the section designation for § 2218.500 to read § 1218.500

PART 1220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

§ 1220.002 [Amended]

■ 24. Amend § 1220.002 by removing the definition of *Director.*

§§ 1220.002, 1220.011, 1220.014, 1220.015, 1220.031, 1220.032, 1220.033, and 1220.034 [Amended]

■ 25. In the following table, amend part 1220 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1220.002, definition of *Capital recovery period* (1)	Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE).	Bureau of Ocean Management (BOEM).
§ 1220.002, definition of *Capital recovery period* (3)	Director	BOEM Director.
§ 1220.011(d)(1)	Director	Office of Natural Resources Revenue (ONRR) Director.
§ 1220.011(d)(2) (two times)	Director	ONRR Director.
§ 1220.011(g)(1)(i)	Director	ONRR Director.
§ 1220.011(g)(2) (two times)	Director	ONRR Director.
§ 1220.011(o)	Director	ONRR Director.
§ 1220.011(o)	Director	BOEM Director.
§ 1220.014(d) (two times)	Director	BSEE Director.
§ 1220.015(b)(1)	Director	ONRR Director.
§ 1220.031(f)	Director	ONRR Director.
§ 1220.032(b) (three times)	Director	BOEM Director.
§ 1220.032(d)	Director	BOEM Director.
§ 1220.033(b)(1)	Director	ONRR Director.
§ 1220.033(c)(2)	Director	ONRR Director.
§ 1220.033(e)	Director	ONRR Director.
§ 1220.034(a)	Director	ONRR Director.
§ 1220.034(d)	Director	ONRR Director.

PART 1243—SUSPENSIONS PENDING APPEAL AND BONDING—OFFICE OF NATURAL RESOURCES REVENUE

Subpart A—General Provisions

§§ 1243.3 and 1243.8 [Amended]

■ 26. In the following table, amend part 1243 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1243.3, definition of *ONRR bond-approving officer.*	Associate Director for Minerals Revenue Management..	Deputy Director for Office of Natural Resources Revenue.
§ 1243.3	Associate Director	Deputy Director.
§ 1243.8	BOEMRE	Bureau of Ocean Energy Management

Subchapter B—Appeals

PART 1290—APPEAL PROCEDURES

■ 27. The authority citation for part 1290 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 43 U.S.C. 1331.

§§ 1290.100, 1290.101, 1290.102, 1290.104, 1290.106, 1290.108, 1290.109 [Amended]

■ 28. In the following table, amend part 1290 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1290.100 Section Heading.	subpart	part
§ 1290.100 (two times)	subpart	part
§ 1290.101 in Section Heading.	subpart	part
§ 1290.101	subpart	part
§ 1290.102 in Section Heading.	subpart	part
§ 1290.102, definition of *Lessee* (two times)	subpart	part
§ 1290.102, definition of *Order*	subpart	part
§ 1290.102, definition of *Party*	subpart	part
§ 1290.104 in Section Heading	subpart	part
§ 1290.104(a)	subpart	part

Amend	By removing the reference to:	And adding in its place:
§ 1290.104(b)	part 243	part 243
§ 1290.104(b)	subparts	parts
§ 1290.106(b)	subpart	part
§ 1290.106(e)	subpart	part
§ 1290.108	subpart	part
§ 1290.109(a) introductory text	subpart	part

[FR Doc. 2013–11993 Filed 5–21–13; 8:45 am]

BILLING CODE 4310–T2–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0467; EPA–R05–OAR–2012–0538; FRL–9808–9]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Prevention of Significant Deterioration Greenhouse Gas Tailoring and Biomass Deferral Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Wisconsin State Implementation Plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on May 4, 2011, June 20, 2012, and September 28, 2012. The revisions modify Wisconsin's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Wisconsin's PSD permitting requirements for their greenhouse gas (GHG) emissions. Additionally, these revisions defer until July 21, 2014, the application of the PSD permitting requirements to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources in the State of Wisconsin. EPA has made the preliminary determination that these revisions are in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs and is approving Wisconsin's revisions.

DATES: This final rule is effective on June 21, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0467, or EPA–R05–OAR–2012–0538. All documents in the docket are listed in the *www.regulations.gov* Web site. 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 either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353–8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, *marcus.danny@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What is being addressed by this document?

On December 28, 2012, at 77 FR 76430, EPA proposed to approve into the state's Federally-approved SIP regulatory additions that Wisconsin submitted which are consistent with the ''PSD and Title V Greenhouse Gas Tailoring; Final Rule,'' 75 FR 31514 (June 3, 2010) (The ''Tailoring Rule''), the ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans Final Rule,'' 75 FR 82536 (December 30, 2010) (The ''PSD SIP Narrowing Rule'') and the ''Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs; Final Rule'' 76 FR 43490, July 20, 2011.

These rules establish thresholds and time frames that ensure that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements for the GHGs that they emit, and defer consideration of CO_2 emissions from bioenergy and other biogenic sources (biogenic CO_2 emissions) when determining whether the modification of a stationary source would result in a net emissions increase that would trigger PSD thresholds and would require the application of Best Available Control Technology.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on January 28, 2013. EPA received one comment supporting EPA's approval of these revisions. EPA received no adverse comments.

III. What action is EPA taking?

EPA is approving Wisconsin's May 4 2011, June 20 2012, and September 28 2012, SIP submittals. Specifically, EPA is approving revisions to chapters NR 400.02 (74m); 400.03 (3) (om), and (4) (go) and (kg); 405.02 (28m); 405.07 (9) of the Wisconsin Administrative Code and Wisconsin State Statutes, Sections 285.60(3m) and 285.63(3m) into the SIP. These revisions implement the Tailoring Rule and Deferral of CO_2 emissions from biogenic sources.

Because Wisconsin's changes to its air quality regulations will incorporate the appropriate thresholds for GHG permitting applicability into its SIP, EPA is also amending 40 CFR 52.2572, to remove subsection (b), which is being replaced by the new rules that Wisconsin has submitted. The new rules are consistent with the Federal Tailoring Rule provisions, which limit the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

that complies with the provisions of the CAA 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 CAA. 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 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.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 22, 2013. 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. 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, and Reporting and recordkeeping requirements.

Dated: April 22, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(126) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(126) On May 4, 2011, June 20, 2012, and September 28, 2012, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's Prevention of Significant Deterioration (PSD) program to incorporate the ''Tailoring Rule'' and the Federal deferral for biogenic CO_2 emissions into Wisconsin's SIP.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 400.02 Definitions. NR 400.02 (74m) ''Greenhouse gases'' or ''GHG'', as published in the Wisconsin Administrative Register August 2011, No. 668, effective September 1, 2011.

(B) Wisconsin Administrative Code, NR 400.03 Units and abbreviations. NR 400.03(3)(om) ''SF6'', NR 400.03(4)(go) ''GHG'', and NR 400.03(4)(kg) ''PFC'', as published in the Wisconsin Administrative Register August 2011, No. 668, effective September 1, 2011.

(C) Wisconsin Administrative Code, NR 405.02 Definitions. NR 405.02(28m) ''Subject to regulation under the Act'', as published in the Wisconsin Administrative Register August 2011, No. 668, effective September 1, 2011.

(D) Wisconsin Administrative Code, NR 405.07 Review of major stationary sources and major modifications—source applicability and exemptions. NR 405.07(9), as published in the Wisconsin Administrative Register August 2011, No. 668, effective September 1, 2011.

(E) Wisconsin Statutes, section 285.60(3m) Consideration of Certain Greenhouse Gas Emissions, enacted on April 2, 2012, by 2011 Wisconsin Act 171.

(F) Wisconsin Statutes, section 285.63(3m) Consideration of Certain Greenhouse Gas Emissions, enacted on April 2, 2012, by 2011 Wisconsin Act 171.

§ 52.2572 [Amended]

■ 3. Section 52.2572 is amended by removing and reserving paragraph (b).

[FR Doc. 2013–12094 Filed 5–21–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0552; FRL–9780–9]

Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve three revisions to the Arizona State Implementation Plan submitted by the Arizona Department of Environmental Quality. Two of these revisions relate to an amendment to Arizona's vehicle emissions inspection program that exempts motorcycles in the Phoenix metropolitan area from

emissions testing requirements. The third revision expands the geographic area in which various air quality control measures, including the vehicle emissions inspection program but also including other control measures, apply in the Phoenix metropolitan area. EPA is approving these SIP revisions based on our conclusion that the SIP revisions meet all applicable requirements and would not interfere with reasonable further progress or attainment of any of the national ambient air quality standards. EPA is finalizing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans.

DATES: *Effective Date:* This rule is effective on June 21, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0552 for this action. Generally, documents in the docket for this action are available electronically at *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 at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., Confidential Business Information). 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: Jeffrey Buss, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (415) 947–4152, email: *buss.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action

On November 5, 2012 (77 FR 66422), EPA proposed to approve revisions to the Arizona state implementation plan (SIP) submitted by the Arizona Department of Environmental Quality (ADEQ) that would exempt motorcycles in the Phoenix metropolitan area from testing under the Arizona motor vehicle emissions inspections and maintenance (''VEI'') program and that would expand the geographic area in which certain air pollution control programs apply within the Phoenix metropolitan area. We proposed these actions under section 110(k) of the Clean Air Act (CAA or ''Act''). (The State of Arizona developed the VEI program to reduce emissions of carbon monoxide (CO), volatile organic compounds (VOC) and oxides of nitrogen (NO_X) from in-use motor vehicles in the Phoenix and Tucson areas.[1])

Specifically, we proposed to approve the submittal on November 6, 2009 of ''Final Arizona State Implementation Plan Revision, Exemption of Motorcycles from Vehicle Emissions Inspections and Maintenance Program Requirements in Area A'' (October 2009) (''2009 VEI SIP Revision'') and the submittal on January 11, 2011 of ''Final Addendum to the Arizona State Implementation Plan Revision, Exemption of Motorcycles from Vehicle Emissions Inspections and Maintenance Program Requirements in Area A, October 2009'' (December 2010) (''2011 VEI SIP Addendum'').

As described in our November 5, 2012 proposed rule, the 2009 VEI SIP Revision submittal includes a non-regulatory portion that provides analyses of emission impacts due to the motorcycle exemption, a demonstration that the exemption would not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS or ''standards''), and a contingency measure establishing a binding commitment on ADEQ to request Legislative action to reinstate emissions testing for motorcycles in the Phoenix area should the Phoenix area experience a violation of the carbon monoxide NAAQS. The 2009 VEI SIP Revision also includes a regulatory portion comprised by House Bill (HB) 2280, enacted by Arizona in 2008 to take effect upon EPA approval. HB 2280 amends the Arizona Revised Statutes (ARS) section 49–542 (''Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition'') by exempting motorcycles in Area A (i.e., the Phoenix area) from emissions testing under the VEI program.[2] [3] The 2011 VEI SIP Revision includes additional information regarding the impacts of the motorcycle exemption on attainment of the 2008 8-hour ozone NAAQS and the 1987 PM_{10} NAAQS and includes a substitute measure to offset the VOC emission reductions foregone by the exemption of motorcycles from the VEI emissions testing requirement.

With respect to the SIP revision that would expand the geographic area in which certain air pollution control programs apply within the Phoenix metropolitan area, we noted in our November 5, 2012 proposed rule that the relevant amended statutory definition of ''Area A'' was included in ADEQ's May 25, 2012 submittal of the *MAG 2012 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area (May 2012)* (''2012 Phoenix Area PM–10 Five Percent Plan''). Specifically, ADEQ included ARS 49–541(1) (''Definitions'') as amended by the Arizona Legislature in 2001 as part of the submittal of the 2012 Phoenix Area PM–10 Five Percent Plan. ARS 49–541(1) establishes the boundaries of Area A.[4]

As explained in our proposed rule, Area A, as last approved in 2003 (68 FR 2912 (January 22, 2003)), includes all of the metropolitan Phoenix carbon monoxide and 1-hour ozone nonattainment areas plus additional areas in Maricopa County to the north, east, and west, as well as a small portion of Yavapai County and the western portions of Pinal County. ''Area A'' is also used by the State of Arizona to identify the applicable area for implementation of a number of air pollution control measures, including but not limited to the VEI, cleaner burning gasoline (CBG), and ''stage II'' vapor recovery programs. The amended ''Area A'' definition, included with the 2012 Phoenix Area PM–10 Five Percent Plan, extends Area A beyond the boundaries approved by EPA in 2003 to add portions of Maricopa County west of Goodyear and Peoria and a small piece of land on the north side of Lake Pleasant in Yavapai County.

As discussed in more detail on pages 66424–66428 of the November 5, 2012 proposed rule, we proposed to approve

[1] VOC and NO_X are precursors to ozone formation in the atmosphere under the influence of sunlight and meteorology.

[2] The changes to ARS Section 49–542 are self-implementing, which means that they become effective upon EPA approval as a revision to the Arizona SIP. See page 4 of the 2009 VEI SIP Revision.

[3] On January 28, 2013, at EPA's request, ADEQ supplemented appendix A of the 2009 VEI SIP Revision with a certified copy of the codified version of ARS section 49–542, along with two House Bills that extended the conditional enactment date set for July 2010 in House Bill 2280 to July 2012, and then to July 2014. We are taking final action to approve this certified copy of ARS 49–542 in today's action.

[4] ADEQ included ARS 49–541(1) in exhibit 1 in Appendix C to the 2012 Phoenix Area PM–10 Five Percent Plan. With respect to ADEQ's May 25, 2012 SIP revision submittal of the 2012 Phoenix Area PM–10 Five Percent Plan, EPA is taking action today only on the amended statutory provision that expands the boundaries of Area A [i.e., amended ARS 49–541(1)]. EPA will take action on the rest of the 2012 Phoenix Area PM–10 Five Percent Plan in one or more future rulemakings.

the exemption for Phoenix-area motorcycles from the emissions testing requirements under the VEI program because:

- With respect to all three SIP revisions, ADEQ has met the procedural (i.e. public process) requirements for SIP revisions under CAA section 110(l) and 40 CFR part 51, subpart F;
- With the emissions testing exemption for motorcycles in the Phoenix metropolitan area, the Arizona VEI would continue to meet Federal minimum requirements for vehicle inspection and maintenance (I/M) programs;
- The VEI program, as amended to exempt motorcycles from the emissions testing requirement, would continue to meet or exceed the alternate low enhanced I/M performance standard in the Phoenix area as required under 40 CFR 51.351 and 51.905(a)(1);
- The motorcycle exemption would not interfere with attainment or maintenance of any of the NAAQS and would thereby comply with section 110(l) of the CAA because the potential incremental increase in emissions of CO, VOC and PM–10 due to foregone motorcycle emissions testing and maintenance would be more than offset by the emissions impact of expanding the boundaries of ''Area A'' [5] because ''Area A'' defines the area of applicability for various air pollution control measures, such as the VEI program, the CBG program, the ''stage II'' vapor recovery program, and various PM–10 control measures, and expanding the boundaries of ''Area A'' thus extends these programs to areas not otherwise covered for the purposes of the Arizona SIP; and
- The 2009 VEI SIP Revision includes a commitment by ADEQ, i.e., to request Legislative action to reinstate emissions testing for motorcycles in the Phoenix area should the area experience a violation of the CO standards, that we find complies with the contingency measure requirements under section 175A(d) of the CAA with respect to the Phoenix area, which is a ''maintenance'' area for the CO standard.

For background information about the EPA's regulations governing motor vehicle inspection and maintenance programs (I/M), the development and evolution of Arizona's VEI program, EPA's actions in connection with that program, as well as additional information concerning the State's public process for adopting these SIP revisions, and our rationale for proposing approval of the three subject SIP revisions, please see our November 5, 2012 proposed rule.

[5] For example, the proposed rule, at page 66427, compares the estimated 1.3 metric tons per day of VOC emissions reductions from expansion of Area A boundaries with the estimated 0.1 metric ton per day of VOC emissions increases from foregone emissions testing under the VEI program for Phoenix area motorcycles.

II. Response to Comments

Our November 5, 2012 proposed rule provided a 30-day public comment period. We received comments from 15 commenters on our proposed rule during the public comment period. All of the commenters except for two expressed their support for EPA's proposed action. In the following paragraphs, we summarize the comments objecting to our proposed action and provide our responses.

Comment #1: The commenter agrees with the proposal to exempt motorcycles from emissions testing, but objects to the expansion of Area A because it expands the use of special gasoline blends (summer and winter) that the commenter believes do nothing for the environment and contribute to fuel shortages and excessive retail fuel costs. The commenter also suggests that the emissions testing exemption for newer model year vehicles be increased from 5 to 10 years based on engine technology improvements.

Response #1: First of all, EPA disagrees with the contention that the special gasoline blends in effect in the Phoenix metropolitan area, and referred to as the ''cleaner burning gasoline'' (CBG) program, do nothing for the environment. To the contrary, EPA has approved a number of Phoenix area air quality plans that rely on the continuation of the CBG program to attain and maintain the NAAQS. For instance, in the *Carbon Monoxide Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area* (May 2003), which was approved by EPA at 70 FR 11553 (March 9, 2005), the Maricopa Association of Governments (MAG) credits CBG with providing over 20% of the CO emissions reductions relied upon to demonstrate maintenance of the CO standard through the first ten years beyond redesignation.[6] More recently, in the *Eight-Hour Ozone Plan for the Maricopa Nonattainment Area* (June 2007), approved by EPA at 77 FR 35285 (June 13, 2012), MAG credits CBG with providing 3.5% of the NO_X reductions that the plan relies upon to demonstrate attainment of the 1997 8-hour ozone standard in the Phoenix-Mesa area.[7]

Second, we note that the commenter does not challenge EPA's conclusion that the expansion of Area A meets all applicable CAA requirements but rather contends that the extension of CBG to a larger area would increase retail fuel costs and lead to fuel shortages. However, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the minimum criteria set in the Clean Air Act or any applicable EPA regulations. Thus, considerations such as whether a State rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a state as part of a SIP [see *Union Electric Company* v. *EPA;* 427 U.S. 246, 265 (1976)]. Also, EPA disapproval of ADEQ's submittal of the statutory provision expanding Area A would not prevent the implementation of CBG in the larger area because the expanded definition of Area A and related CBG requirements would still apply in the larger area, and would still be enforceable, under State law, regardless of EPA's action to approve or disapprove the amended definition as a revision to the Arizona SIP.

Lastly, with respect to the suggestion that the emissions testing exemption for newer model year vehicles should be increased from 5 to 10 years, any changes to the exemption for motor vehicle emissions testing would first require a change in Arizona law. Thus, the commenter should direct this suggestion to State officials in the first instance. If such a statutory change were to be adopted, ADEQ would need to adopt and submit the change as a revision to the Arizona SIP, including documentation showing that the revision meets all relevant CAA and EPA requirements—including a demonstration that the change would not interfere with reasonable further progress or attainment of the NAAQS under section 110(l) of the Act. Upon receipt of a complete SIP revision, EPA would then consider approval or disapproval in the context of notice-and-comment rulemaking.

Comment #2: The commenter objects to EPA's proposed approval of the exemption for motorcycles because motorcycle-related emissions contribute to the overall problem of poor air quality in the Phoenix metropolitan area and should not be ignored even though it may be small in comparison to the emissions generated by cars.

[6] See page ES–7 of MAG's *Carbon Monoxide Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area* (May 2003).

[7] See page ES–5 of MAG's *Eight-Hour Ozone Plan for the Maricopa Nonattainment Area* (June 2007).

Response #2: In support of the contention that motorcycle emissions do contribute to overall air quality problems in the Phoenix metropolitan area, the commenter presents an estimate of total emissions from motorcycles in the Phoenix area that, as corrected for a computational error and adjusted for unit conversions, are not inconsistent with the corresponding estimates of motorcycle emissions prepared by MAG in the *Eight-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa Nonattainment Area* (February 2009).[8] However, we did not propose to approve the VEI exemption for motorcycles based on the relatively low contribution of motorcycle emissions to overall pollutant emissions in the Phoenix metropolitan area. Rather, we based our proposed approval on our conclusion that the VEI program, as amended to include the motorcycle exemption, would continue to meet Federal I/M requirements and that any increase in emissions due to the exemption would be offset by the reduction in emissions due to the extension of various control measures to a larger geographic area by virtue of the amended statutory definition of ''Area A.''

More specifically, in connection with the emissions impact analysis submitted by ADEQ, we agreed with its focus on the incremental change due to foregone emissions testing and maintenance of motorcycles under the VEI program rather than on total motorcycle-related emissions. Next, we found ADEQ's emissions estimates for the incremental increase to be reasonable. Converted to tons per year, ADEQ's estimates for the incremental increase amounts to approximately 20 tpy for VOC and 100 tpy for CO (see the column labeled ''I/M benefit from motorcycle testing and repair'' in table 2 of EPA's November 5, 2012 proposed rule). As to this incremental increase in VOC and CO emissions, we concluded that the incremental increase in emissions due to foregone emissions testing and maintenance would not interfere with attainment or maintenance of any of the NAAQS given the emissions benefits associated with the expansion of Area A and the related extension of various air quality control measures to the larger area, including the VEI program, the CBG program, the vapor recovery program, and various PM–10 control measures, given that the geographic applicability for all of these programs is defined by ''Area A.'' See page 66426–66428 of EPA's November 5, 2012 proposed rule.

III. EPA's Final Action

Under section 110(k) of the CAA, and for the reasons set forth in our November 5, 2012 proposed rule and summarized herein, EPA is taking final action to approve the revisions to the Arizona SIP submitted by ADEQ on November 6, 2009 and January 11, 2011 concerning the exemption of motorcycles from the emissions testing requirements under the Arizona VEI program in the Phoenix area, because we find that the revisions meet all applicable requirements, and together with the expansion of the geographic area to which the VEI and other air pollution control measures apply, would not interfere with reasonable further progress or attainment of any of the national ambient air quality standards. In connection with our approval of the State's exemption of motorcycles from the VEI emissions testing requirements, we are approving an amended statute, Arizona Revised Statutes (ARS) section 49–542, that codifies this exemption in State law.[9]

EPA is also approving the revised statutory provision [amended Arizona Revised Statutes (ARS) section 49–541(1)], submitted by ADEQ on May 25, 2012,[10] that expands the boundaries of Area A, i.e., the area in which the various air pollution control measures (including the VEI, and cleaner burning gasoline and stage II vapor recovery programs) in the Phoenix area apply.

IV. 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 proposes to approve 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).

[8] In *Eight-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa Nonattainment Area* (February 2009) (see page 109 of the Appendix A, Exhibit 1 (''2005 Ozone Periodic Emission Inventory''), MAG estimates that motorcycles in year 2005 emitted approximately 660 tons per year (tpy), 200 tpy, and 2,620 tpy of VOC, NO_X, and CO, respectively, within the Phoenix-Mesa 8-hour ozone nonattainment area. The corresponding estimates prepared by the commenter, as corrected for an error in computation (i.e., the commenter's calculated estimate of CO per bike should have been 33,817 grams (per year) instead of 3,137 grams (per year) based on 7 grams per kilogram and 4,831 kilometers driven per year per bike) and converted to tons per year, are approximately 360 tpy for VOC (and for VOC+NO_X) and 2,720 tpy for CO.

[9] Final approval of the current version of ARS 49–542 exempting motorcycles from VEI emissions testing requirements supersedes the previous versions of ARS 49–542 approved by EPA and made a part of the applicable Arizona SIP. The most recent prior approval by EPA of ARS 49–542 was published at 72 FR 15046 (March 30, 2007).

[10] Final approval of the amendment to ARS 49–541(1) expanding the boundaries of ''Area A'' to those promulgated by the Arizona Legislature in 2001 supersedes the previous versions of ARS 49–541(1) approved by EPA and made a part of the applicable Arizona SIP. The most recent prior approvals by EPA of the definition of ''Area A'' in ARS 49–541(1) were published at 68 FR 2912 (January 22, 2003) and 69 FR 10161 (March 4, 2004). The definition of the boundaries of ''Area A'' in ARS 49–541(1) was the same in both the 2003 and 2004 final approval actions and reflect the boundaries promulgated by the Arizona Legislature in 1999. Approval of the amended statutory definition of ''Area A'' in today's final action expands the geographic applicability of the VEI program, the CBG program, the Stage II vapor recovery program and any other Arizona SIP control measure that relies on the definition of ''Area A'' in ARS 49–541(1) under the Arizona SIP.

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.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 22, 2013. 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. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 4, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations are 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraphs (c)(155), (c)(156), and (c)(157) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(155) The following plan was submitted on November 6, 2009 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) Affidavit by Efrem K. Sepulveda, Law Librarian, Arizona State Library, Archives and Public Records, certifying authenticity of reproduction of A.R.S. § 49–542 (2008 edition) plus title page to pocket part of Title 49 (2008 edition), signed January 11, 2013.

(*2*) Arizona Revised Statutes (Thomson West, 2008 Cumulative Pocket Part): Title 49 (the environment), section 49–542 (''Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition'').

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(*1*) Final Arizona State Implementation Plan Revision, Exemption of Motorcycles from Vehicle Emissions Inspections and Maintenance Program Requirements in Area A (October 2009), adopted by the Arizona Department of Environmental Quality on November 6, 2009, excluding appendices A and C.

(156) The following plan was submitted on January 11, 2011 by the Governor's designee.

(i) [Reserved]

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(*1*) Final Addendum to the Arizona State Implementation Plan Revision, Exemption of Motorcycles from Vehicle Emissions Inspections and Maintenance Program Requirements in Area A, October 2009 (December 2010), adopted by the Arizona Department of Environmental Quality on January 11, 2011.

(157) The following plan was submitted on May 25, 2012 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) Affidavit by Barbara Howe, Law Reference Librarian, Arizona State Library, Archives and Public Records, certifying authenticity of reproduction of Arizona Revised Statutes § 49–451 (*sic*) (corrected to § 49–541) (2001 pocket part), signed May 3, 2012.

(*2*) Arizona Revised Statutes (West Group, 2001 Cumulative Pocket Part): title 49 (the environment), section 49–541 (''Definitions''), subsection 1 [Definition of Area A].

[FR Doc. 2013–12091 Filed 5–21–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0203; FRL–9386–1]

1-Naphthaleneacetic acid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of 1-naphthaleneacetic acid in or on avocado; fruit, pome, group 11–10; mango; sapote, mamey; and rambutan. This regulation additionally deletes certain tolerances, identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 22, 2013. Objections and requests for hearings must be received on or before July 22, 2013, 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: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0203, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: *nollen.laura@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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–2012–0203 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 July 22, 2013. 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 (excluding any Confidential Business Information (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 the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0203, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 2, 2012 (77 FR 25954) (FRL–9346–1), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E7991) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.155 be amended by establishing tolerances for residues of the plant growth regulator 1-naphthaleneacetic acid and its conjugates in or on rambutan at 3 parts per million (ppm); avocado, mango, and sapote, mamey at 0.05 ppm; and fruit, pome, group 11–10 at 0.15 ppm. The petition additionally requested to amend the tolerances in 40 CFR 180.155 by removing the tolerance for fruit, pome, group 11 at 0.15 ppm, as it will be superseded by the tolerance on fruit, pome, group 11–10 at 0.15 ppm. That document referenced a summary of the petition prepared on behalf of IR–4 by Amvac Chemical Corporation, 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 has revised the proposed tolerance on rambutan from 3.0 ppm to 2.0 ppm. The Agency has also revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reason for these changes is explained in Unit IV.C.

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 FFDCA section 408(b)(2)(D), and the factors specified in that section, 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 1-naphthaleneacetic acid, including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with 1-naphthaleneacetic acid follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its 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.

Based on structural activity relationship and metabolism data, all forms of 1-naphthaleneacetic acid, its salts, ester, and acetamide which are collectively referred to as naphthalene acetates (NAA), are expected to exhibit similar toxicological effects. In selecting endpoints of toxicity for risk assessment to exposures to the various NAA forms, the most conservative endpoint was selected from the studies that showed the lowest NOAELs for assessing a particular exposure. In addition, all forms degrade to the acid fairly quickly in the field and in biological systems.

Therefore, EPA has concluded that required toxicity testing on any form should serve for all members of this group of chemicals.

Repeated oral exposures to NAA in rats and dogs resulted in decreased body weights, and body weight gains accompanied by decreased food consumption. The major target organs from subchronic and chronic oral exposures were the liver, stomach, and lung. Repeated oral exposures also resulted in decreased hematocrit and hemoglobin, along with reduced red blood cell count in rats and dogs and hypocellularity of the bone marrow in dogs.

There was no developmental toxicity at the highest dose of NAA (the acid) tested in the rat or in the rabbit (orally gavaged), but developmental toxicity (decreased fetal weight and minor skeletal changes) were seen in rats orally gavaged with the sodium salt. Reproductive effects of NAA sodium salts were limited to reduced litter survival and pup weight throughout lactation in both generations of offspring in a 2-generation reproduction study.

NAA and its acetamide and the ethyl ester were tested for mutagenic effects in a gene mutation bacterial assay, mouse lymphoma assay, and mouse erythrocyte micronucleus assay, mouse lymphoma assay, and mouse erythrocyte micronucleus assay and were not found to be mutagenic. Additionally, NAA was tested for mitotic gene conversion and dominant lethality in rats and found to be negative. In a published carcinogenicity study of NAA acetamide in mice and a guideline chronic/oncogenicity study of NAA sodium salt in rats and mice, NAA compounds were not carcinogenic in mice or rats.

Specific information on the studies received and the nature of the adverse effects caused by NAA 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: ''Naphthalene Acetates Human Health Risk Assessment for a Proposed Use on Avocado, Mango, Mamey Sapote, Rambutan, and Updating Crop Group Fruit, Pome, Group 11–10.'' at pages 42–50 in docket ID number EPA–HQ–OPP–2012–0203.

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 (LOC) 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 (U/SF) 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 NAA used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR NAA FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children and females 13–49 years of age)	An acute RfD for the general population or any population subgroups was not selected because no effect attributable to a single exposure was observed in animal studies.		
Chronic dietary (All populations)	NOAEL = 15 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.15 mg/kg/day ..... cPAD = 0.15 mg/kg/day	Chronic Toxicity—Dog LOAEL = 75 mg/kg/day based on stomach lesions in 75% of the males and by slight sinusoidal histiocytosis in the liver of 50% of the males.
Dermal short-term (1 to 30 days) ..	Dermal study ..... NOAEL = 300 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	21-Day dermal: NAA Na salt LOAEL = 1,000 mg/kg/day based on reduced body weight gain and food efficiency.
Inhalation short-term (1 to 30 days).	Oral study ..... NOAEL = 50 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 10x	LOC for MOE = 1,000	Developmental Rat: NAA LOAEL = 150 mg/kg/day based on decreased body weight gain during gestation period.
Cancer (Oral, dermal, inhalation) ..	Not likely to be carcinogenic to humans.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligrams/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to NAA, EPA considered exposure under the petitioned-for tolerances as well as all existing NAA tolerances in 40 CFR 180.155. EPA assessed dietary exposures from NAA 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. No such effects were identified in the toxicological studies for NAA; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA), conducted from 2003–2008. As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance-level residues for all commodities. In addition, DEEM version 7.81 default processing factors were used, when appropriate.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that NAA 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 NAA. Tolerance level residues and/or 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 NAA in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of NAA. 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) and Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of NAA for chronic exposures for non-cancer assessments are estimated to be 2.99 parts per billion (ppb) for surface water and 0.0226 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 3.0 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). NAA is currently registered for root dip and sprout inhibition applications to ornamentals, which could result in residential exposures. There is a potential for short-term dermal and inhalation exposures to residential handlers, resulting from loading and applying NAA. There are no residential uses for NAA that result in exposure to children via incidental oral activities. The rooting compounds are applied by holding the plant and dipping the roots into solution. Very little exposure is expected from this use. Sprout inhibitors are applied by spray or paint brush/roller after pruning trees, or by spraying near the base of the tree after pruning root suckers. There is very little potential for postapplication exposure to NAA for adults or children based on the residential use pattern; therefore, residential postapplication exposure is not expected, nor is intermediate- or long-term exposure scenarios based on the intermittent nature of applications by homeowners.

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 NAA to share a common mechanism of toxicity with any other substances, and NAA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that NAA 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 Web site 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 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.* There is low concern and no residual uncertainty for pre- and/or postnatal toxicity resulting from exposure to the NAA group of chemicals. The available data provided no indication of increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* exposure to NAA or to prenatal and postnatal exposure in rat reproduction studies. In the developmental toxicity study conducted with NAA sodium salt in rats, fetal toxicity (mainly decreased fetal weights and minor skeletal changes) was observed at a dose lower than the maternally toxic dose.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF was reduced to 1X for the oral and dermal routes of exposure and retained at 10X for the inhalation route of exposure. That decision is based on the following findings:

i. The toxicity database for NAA is not complete. EPA concluded that a 28-day inhalation toxicity study is required for NAA, based on a weight-of-evidence approach. A 10X SF was retained for the inhalation route of exposure due to the lack of the required 28-day inhalation study and given that the endpoint for subchronic inhalation is based on a developmental study (NOAEL = 50 mg/kg/day) that noted decreased body weight gains during gestation.

Additionally, recent changes to 40 CFR part 158 imposed new data requirements for immunotoxicity testing

(OCSPP Guideline 870.7800) for pesticide registration. While an immunotoxicity study is not available for NAA, the toxicology database does not show any evidence of treatment-related effects on the immune system and the overall weight-of-evidence suggests that this chemical does not directly target the immune system. Consequently, the Agency does not believe that conducting a functional immunotoxicity study will result in a lower POD than that currently used for overall risk assessment, and therefore, an additional safety factor is not needed to account for lack of this study.

Acute and subchronic neurotoxicity studies are also required as a part of new data requirements in 40 CFR part 158; however, EPA has waived the requirement for these studies at the present time. This decision is based on: (1) The lack of neurotoxicity and neuropathology in the available toxicology studies for NAA; and (2) liver, stomach, and lung were identified as the target organs, with dogs being the most sensitive species. Therefore, neurotoxicity studies conducted in rats would not provide a more sensitive endpoint for risk assessment, and studies would be unlikely to yield PODs lower than the current PODs used for overall risk assessment.

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

iii. There is no evidence that NAA results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. In the developmental toxicity study conducted with NAA sodium salt in rats, fetal toxicity was observed at a dose lower than the maternally toxic dose. However, there were clear NOAELs in this developmental study and the PODs used in the chronic dietary assessment (15 mg/kg/day) are protective of the fetal effects observed in the study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to NAA in drinking water. Based on the discussion in Unit III.C.3., regarding limited residential use patterns, exposure to residential handlers is very low and EPA does not anticipate postapplication exposure to children or incidental exposures to toddlers resulting from use of NAA in residential settings. These assessments will not underestimate the exposure and risks posed by NAA.

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.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, NAA is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to NAA from food and water will utilize 2.0% of the cPAD for children 1–2 years 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 NAA 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). Though there is potential for short-term dermal and inhalation exposures to adult handlers resulting from residential applications of NAA to ornamentals, aggregate risk was not estimated for NAA because the toxicity endpoints selected for the chronic dietary route of exposure and those selected for inhalation and dermal routes of exposure are not based on common effects i.e., the chronic dietary endpoint is based on systemic effects and the dermal and inhalation endpoints are based on decreased body weight gain. Exposure pathways and routes are only aggregated when they share a common toxic effect.

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). Because no intermediate-term adverse effect was identified, NAA is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, NAA 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 NAA residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement method, a high performance liquid chromatography (HPLC) method using fluorescence detection (Method NAA–AM–001) and a similar method (Method NAA–AM–002), is available to enforce the tolerance expression for NAA in plant commodities.

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; email 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 United Nations 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.

The Codex has not established a MRL for NAA.

C. Revisions to Petitioned-For Tolerances

Based on the data supporting the petition, EPA revised the proposed tolerance on rambutan from 3.0 ppm to

2.0 ppm. The Agency revised this tolerance level based on analysis of the residue field trial data using the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures.

Finally, the Agency has revised the tolerance expression to clarify: (1) That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of NAA not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of NAA, 1-naphthaleneacetic acid, in or on avocado at 0.05 ppm; fruit, pome, group 11–10 at 0.15 ppm; sapote, mamey at 0.05 ppm; mango at 0.05 ppm; and rambutan at 2.0 ppm. This regulation additionally removes the tolerance in or on fruit, pome, group 11 at 0.15 ppm and the time-limited tolerance in or on avocado at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) 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 FFDCA section 408(d), 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 FFDCA section 408(n)(4). 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) (2 U.S.C. 1501 *et seq.*).

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) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action 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: May 14, 2013.

Daniel J. Rosenblatt,

Acting 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 180.155 is revised to read as follows:

§ 180.155 1-Naphthaleneacetic acid; tolerances for residues.

(a) *General.* Tolerances are established for the residues of 1-naphthaleneacetic acid, including its metabolites and degradates in or on the commodities in the following table. Compliance with the tolerance levels specified is to be determined by measuring only 1-naphthaleneacetic acid and its conjugates, calculated as the Stoichiometric equivalent of 1-naphthaleneacetic acid, in or on the commodity.

Commodity	Parts per million
Avocado	0.05
Cherry, sweet	0.1
Fruit, pome, group 11–10	0.15
Mango	0.05
Olive	0.7
Orange	0.1
Pineapple[1]	0.05
Potato	0.01
Rambutan	2.0
Sapote, mamey	0.05
Tangerine	0.1

[1] There are no U.S. registrations since 1988.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2013–12207 Filed 5–21–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 152

[CMS–9995–IFC3]

RIN 0938–AQ70

Pre-Existing Condition Insurance Plan Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period sets the payment rates for covered services furnished to individuals enrolled in the Pre-Existing Condition Insurance Plan (PCIP) program administered directly by HHS beginning with covered services furnished on June 15, 2013. This interim

final rule also prohibits facilities and providers who, with respect to dates of service beginning on June 15, 2013, accept payment for most covered services furnished to an enrollee in the federally-administered PCIP from charging the enrollee an amount greater than the enrollee's out-of-pocket cost for the covered service as calculated by the plan. The PCIP program was established under Section 1101 of Title I of the Patient Protection and Affordable Care Act (Affordable Care Act).

DATES: *Effective date:* This interim final regulation is effective on June 15, 2013.

Comment date: To be assured consideration, written comments must be received at one of the addresses provided below, no later than 5 p.m. on July 22, 2013. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

ADDRESSES: In commenting, please refer to file code CMS–9995–IFC3. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed).

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9995–IFC3, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9995–IFC3, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–4492 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

FOR FURTHER INFORMATION CONTACT: Kevin Simpson, Centers for Medicare & Medicaid Services, Department of Health and Human Services, (410) 786–0017.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act, (Pub. L. 111–148) was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act), (Pub. L. 111–152) was enacted on March 30, 2010 (collectively, ''Affordable Care Act''). Section 1101 of the Affordable Care Act directs the Secretary of Health and Human Services (HHS) to establish, either directly or through contracts with states or nonprofit private entities, a temporary high risk health insurance pool program to provide access to affordable health insurance coverage to eligible uninsured individuals with pre-existing conditions. A number of states elected to contract with HHS to establish and administer a high risk pool using PCIP funds. HHS directly established and administers a high risk pool in the remaining states and the District of Columbia. (Hereafter, we generally refer to this program as the Pre-Existing Condition Insurance Plan program, or the PCIP program. We refer to the PCIP program administered by HHS as the ''federally-administered PCIP'' or the ''Plan'' and a PCIP program administered by a state or its designated entity as a ''state-based PCIP.'') The PCIP program is intended to provide health insurance coverage to eligible uninsured individuals with pre-existing conditions until 2014. Beginning in 2014, most health insurance issuers will be required to offer coverage to all individuals, regardless of pre-existing conditions, pursuant to section 2704 of the Public Health Service Act. Eligible individuals will be able to obtain health insurance coverage either by enrolling in a qualified health plan offered through the new Health Insurance Exchanges (also called Marketplaces) established under section 1311 or 1321 of the Affordable Care Act, or by enrolling in health insurance coverage offered in the individual or group market outside of the Exchanges.

As a temporary bridge to the provisions that go into effect beginning in 2014, the PCIP program was designed to provide coverage to eligible individuals who have been locked out of the insurance market due to their health status. Since enrollment began in July 2010, the PCIP program has experienced significant and sustained growth, enrolling more than 135,000 otherwise uninsured individuals with pre-existing conditions. Many PCIP enrollees have serious health conditions that require immediate and ongoing medical treatment including severe or life threatening conditions such as cancer. In 2012, the average annual claims cost paid per enrollee was $32,108. This cost per enrollee exceeds even that of state high risk pools that predate the Affordable Care Act for several reasons. Like other high risk pools, PCIP enrollees are limited to people that were previously considered uninsurable due to high expected claims cost. In contrast to many state high risk pools, PCIP enrollees also do not

experience any waiting periods or pre-existing condition exclusions upon enrollment in the program.

The combined effect of the number of individuals enrolled in the program, particularly very sick individuals, their high utilization of covered services, and the statutory limitations on enrollee cost-sharing (which limits the maximum amount an enrollee pays out-of-pocket for covered services to $6,250 in 2013) has led to a situation where the overall cost of the PCIP program is higher than originally projected. While the actuarial estimates that HHS relies on to manage the program fluctuate as new claims data is received and processed, given the current enrollment projections and the current rate of claims payment, the aggregate amount needed for the payment of the expenses of the PCIP program is estimated to exceed the amount of remaining funding appropriated by Congress to pay for such expenses until the statutory end to the program in 2014, unless we implement the policy changes being announced in this interim final rule.

We have already taken measures to contain costs, with the intent of sustaining the program until 2014. In May of 2012, the federally-administered PCIP ceased paying referral fees to agents and brokers in connection with enrolled individuals they had referred to the program and began requiring that applications for enrollment include documentation showing that the individual had been denied health insurance coverage due to the existence of a pre-existing condition. On August 1, 2012, the federally-administered PCIP switched provider networks, reducing both its negotiated and out-of-network payment rates to providers. This network change was followed by a targeted effort to negotiate additional discounts from in-network inpatient facilities that were treating a large number of PCIP enrollees. Additionally in 2012, the federally-administered PCIP limited the specialty drug benefit such that the plan would only cover specialty drugs dispensed by in-network pharmacies.

Beginning January 1, 2013, the federally-administered PCIP implemented additional cost containment measures, including—(1) The elimination of two of three former plan options in favor of a single plan option; (2) an increase in the maximum out-of-pocket limit from $4,000 to $6,250 for in-network services; and (3) an increase in coinsurance, once the deductible has been met, from 20 percent to 30 percent of the plan allowance for in-network covered services. Furthermore, on February 15, 2013, the federally-administered PCIP suspended its acceptance of new enrollment applications until further notice.

State-based PCIPs suspended their acceptance of new enrollment applications received after March 2, 2013. Additionally, a number of state-based PCIPs have taken measures to constrain costs in their programs, for example, by renegotiating their facility and physician reimbursement rates or by setting their payment rates at levels similar to the rates paid by Medicare. Lastly, in May 2013 HHS began negotiations with state-based PCIPs on a final program contract, with a period of performance running from June 1, 2013 through December 31, 2013. The contract HHS will offer to state-based PCIPs will be a cost reimbursement contract up to, but not exceeding, the funding obligated in the contract.

Based on estimates, HHS believes it is prudent and necessary to make additional adjustments in the federally-administered PCIP with respect to payment rates for covered services in order to ensure that there is sufficient funding available to provide coverage to currently enrolled individuals until the program ends in 2014.

II. Provisions of the Interim Final Rule

This interim final rule specifies that we are using our authority under section 1101(g)(2) of the Affordable Care Act to set the payment rates for covered services in the federally-administered PCIP for dates of service beginning on June 15, 2013. As explained below, with the exception of covered services furnished under the prescription drug, organ/tissue transplant, dialysis and durable medical equipment benefits, covered services furnished to enrollees in the federally-administered PCIP program will be paid at—(1) 100 percent of Medicare payment rates, or (2) where Medicare payment rates cannot be implemented by the federally-administered PCIP, 50 percent of billed charges or a rate generated pricing methodology using a relative value scale which is generally based on the difficulty, time, work, risk and resources of the service. (Hereafter, we generally refer to this pricing methodology as ''relative value scale'' pricing.) These rates will become the new plan allowances for the covered services, with the Plan being responsible for reimbursing the facility or a provider for a portion and the enrollee being responsible for reimbursing the facility or provider for the remainder, as calculated by the Plan using the current cost sharing rules described in the Plan brochure.

Furthermore, to protect enrollees in the federally-administered PCIP from having to shoulder potentially significant costs that could be shifted to them as a result of this new payment policy, we are also adopting a policy that prohibits any facility or provider who, with respect to dates of service beginning on June 15, 2013, accepts payment for a covered service provided to an enrollee in the federally-administered PCIP (excepting only the four benefit categories discussed below) from charging the enrollee an amount greater than the enrollee's out-of-pocket cost for the covered service as calculated by the Plan based on the plan allowance for the covered service. In other words, as a condition of accepting payment for most covered services, facilities and providers will be prohibited from ''balance billing'' enrollees in the federally-administered PCIP for the difference between the plan allowance for those covered services and the charge for the covered service that they might otherwise bill to a patient who is not a federally-administered PCIP enrollee.

Presented below is a discussion of the specific regulatory provisions set forth in this interim final rule.

A. Insufficient Funds (§ 152.35(c))

Section 1101(g)(2) of the Affordable Care Act states that ''[i]f the Secretary estimates for any fiscal year that the aggregate amounts available for the payment of the expenses of the high risk pool will be less than the actual amount of such expenses, the Secretary shall make such adjustments as are necessary to eliminate such deficit.'' We have codified this provision at 45 CFR 152.35(b).

Since enrollment began in July 2010, the PCIP program has experienced significant and sustained growth, providing affordable health care insurance to more than 135,000 of the sickest and most vulnerable uninsured individuals with pre-existing conditions. As a result, claims paid by the PCIP program are, on average, 2.5 times higher than claims paid by state high risk pools that predate the PCIP program. Based on enrollment and claims data, current HHS estimates indicate that the aggregate amount needed to pay for PCIP program expenses may be greater than the remaining funding appropriated by Congress to pay for such expenses until coverage under the program ends in 2014. Thus, to ensure that there is sufficient funding to pay for the expenses of the PCIP program until 2014, as directed by the statute, we are adding a new § 152.35(c) to our

regulations. This new section states that with the exception of covered services furnished under the prescription drug, organ/tissue transplant, dialysis and durable medical equipment benefits, the payment rates for covered services in the federally-administered PCIP with dates of service beginning June 15, 2013 will be paid at—(1) 100 percent of Medicare payment rates; or (2) where Medicare payment rates cannot be implemented by the federally-administered PCIP, 50 percent of billed charges or a rate using relative value scale pricing methodology. For purposes of implementing this interim final rule, we presume that (for covered services paid at 50 percent of billed charges) a facility or provider's billed charge will be reasonable. Such charges are subject to review. The benefit and premium provisions codified at 45 CFR part 152 Subpart D will not change. In addition, as the new payment rates will become the new plan allowances for the covered services, we note that the Plan will be responsible for reimbursing the facility or a provider for a portion of these rates, and the enrollee will be responsible for reimbursing the facility or provider for the remainder, as calculated by the Plan using the current cost sharing rules described in the Plan brochure.

HHS chose to index the new payment rates that will apply to most covered services to the Medicare payment rate because Medicare rates are widely accepted, familiar, and publicly available. Since Medicare payment rates are well known by facilities and providers, we believe using a rate indexed to Medicare best informs them of what the payment rate for most covered services will be. Based on enrollment and claims data, current HHS estimates indicate that implementing a payment rate that is 100% percent of Medicare will allow us to ensure that there is sufficient funding to pay for the claims and administrative expenses of the PCIP program until coverage under the program ends in 2014.

Since the federally-administered PCIP utilizes a third party administrator to administer the Plan, there are a few instances where Medicare rates cannot serve as the basis for indexing the new Plan rates. The payment rate for these covered services will be 50 percent of billed charges or calculated using a relative value scale pricing methodology. We have chosen to adopt a different payment rate in such instances to ensure that the services currently covered under the Plan can continue to be covered by the federally-administered PCIP while also addressing the need to further contain program costs. These rates were chosen because the federally-administered PCIP can immediately operationalize them. Given the short remaining life of the program, and the limited number of covered services to which these payment rates would apply, we believe, it would be inefficient and too costly for HHS to operationalize other payment rates that could be applied to these covered services. We note that a facility or provider will be able to contact the federally-administered PCIP directly to determine the plan allowance for one of these covered services before providing the service to a federally-administered PCIP enrollee. Below, we discuss the specific covered services for which payment will be 50 percent of billed charges or a rate generated using a relative value scale pricing methodology.

To the extent to which these covered services are non-pharmaceutical services, the payment rate will be calculated using a the relative value scale payment methodology that uses a relative value scale generally based on the difficulty, time, work, risk and resources of the service. For pharmaceutical services other than those administered under the current Plan prescription drug benefit, the relative value scale payment methodology is similar to the pricing methodology used for Medicare Part B drugs based on published acquisition costs or average wholesale price for pharmaceuticals as published in the Red Book by RJ Health Systems, Thomson Reuters. In these cases the plan allowance will be based on the above described relative value scale pricing methodology and subject to the prohibition on balance billing (discussed below). If no Medicare payment rate or relative value scale pricing methodology is available, the federally-administered PCIP will apply the 50 percent of billed charges payment rate. In these cases, the plan allowance is also subject to the prohibition on balance billing (discussed below).

Other instances where covered services will be paid at 50 percent of billed charges are—(1) Professional services where there are no comparable CPT codes; (2) facility based services where the facility does not participate in Medicare and therefore has no Medicare ID; (3) facility-based services where Medicare rates are not yet available or not yet incorporated into the payment software; (4) facility-based services provided in a free-standing facility for skilled nursing facilities, long-term acute care facilities, rehabilitation facilities, mental health and substance abuse facilities; (5) facility-based services where all data elements required to calculate the Medicare payment rate are not provided; (6) facility-based services for home health providers (UB billers only); and (7) covered services that are not covered by Medicare. In these cases the plan allowance will be based on 50 percent of billed charges and subject to the prohibition on balance billing (discussed below). Enrollees will, however, remain responsible for paying any applicable cost-sharing amounts, as calculated by the Plan.

We are adopting these new payment rates for the federally-administered PCIP based on current enrollment projections and the current rate of claims payment. If these enrollment and claims projections change after this interim final rule goes into effect, HHS may opt, through future rulemaking, to change the payment rate.

Given the changes we have already made to the prescription drug benefit in the federally-administered PCIP as previously discussed, we believe that establishing new payment rates for prescription drugs is not administratively feasible or cost effective. Therefore, the current plan allowances that apply to the prescription drug benefit in the federally-administered PCIP will not be affected by this interim final rule and will continue to apply. Similarly, we will not apply the new payment rates to covered services furnished under the organ/tissue transplant benefit to ensure that enrollees continue to have access to the federally-administered PCIP's network of transplant centers of excellence, which we believe will lead to fewer complications, shorter lengths of stay, fewer readmissions, better health outcomes, and lower costs. Accordingly, the current plan allowances for covered services furnished under the organ/tissue transplant benefit will remain the same. Also, we will not apply a new payment rate to the dialysis services provided under the diagnostic and treatment services benefit because we are unable to operationalize a Medicare payment rate. We believe that the current negotiated rates with dialysis providers result in payments that are likely to be less than 50 percent of billed charges. Therefore, we believe maintaining our current in-network payment rate for this service is more competitive than if we were to implement a new payment rate at 50 percent of the billed charge. Finally, we will not apply the new payment rates to covered services furnished under the durable medical equipment benefit, which currently is provided to enrollees in the federally-

administered PCIP on an in-network basis only. We believe that the rates currently paid for durable medical equipment are at least as competitive as Medicare payment rates.

This interim final rule establishes new payment rates for most covered services furnished in the federally-administered PCIP. The federally-administered PCIP is administered directly by HHS. We note that HHS can implement this interim final rule quickly and efficiently. The state-based PCIPs have previously indicated to HHS that they are unable to implement new facility and provider rates quickly. Therefore, we have taken the contracting strategy outlined herein with state-based PCIPs.

B. Premiums and Cost-Sharing (§ 152.21(c))

Section 1101(c)(2)(D) of the Affordable Care Act requires that a PCIP program established under this section meet ''any other requirements determined appropriate'' by the Secretary. We are using this authority to adopt a new requirement for the federally-administered PCIP that conditions a facility or provider's acceptance of the new payment rates discussed above for most covered services on the facility or provider's agreement not to balance bill the enrollee for an amount greater than the cost-sharing amount calculated by the Plan.

Balance billing is a term generally used to describe the practice of billing a patient for the difference between the plan allowance for a covered service and the amount that the facility or provider would otherwise charge for the service. Although the federally-administered PCIP currently contracts with a network of facilities and providers that have agreed not to balance bill, it may not be able to sustain that contractual arrangement as it currently exists, or otherwise enter into new contracts with networks that will accept as payment in full the payment rates we are adopting in this interim final rule. Thus, the federally-administered PCIP may operate without a network for most covered services, and the corresponding protection against balance billing that has, to date, been available to enrollees who choose to use network facilities and providers.

Without such protection, enrollees in the federally-administered PCIP could become liable to pay significant out-of-pocket costs for many covered services. We understand that facility and provider charges will often be higher than the rates we are setting in this interim final rule. Allowing this financial liability to transfer to the enrollee could leave federally-administered PCIP enrollees no better off than they would have been if they had no PCIP coverage, and runs counter to the entire PCIP concept, which is to provide affordable health insurance coverage to those who need it most. Also, we believe that the payment rates we are setting in this interim final rule are still better than the alternative, which is leaving facilities and providers with the possibility of having to decide whether to furnish uncompensated care.

Accordingly, to safeguard federally-administered PCIP enrollees from experiencing potentially significant increases in their out-of-pocket costs due to balance billing, we are adding a new § 152.21(c) to our regulations. Beginning with June 15, 2013 dates of service, this new section requires all facilities and providers that accept payment from the federally-administered PCIP for furnishing a covered service to an enrollee (with the exception of covered services furnished under the prescription drug, organ/tissue transplant, dialysis and durable medical equipment benefits) to accept as payment in full the plan allowance for the covered service, which includes the cost-sharing amount calculated by the Plan for the covered service. With respect to these covered services, facilities or providers may not bill the enrollee for an amount greater than the amount determined by the Plan to be the enrollee's cost-sharing amount for the covered service.

The prohibition on balance billing will not apply to covered services furnished under the prescription drug, organ/tissue transplant, dialysis and durable medical equipment benefits because, as explained above, covered services furnished under these benefits will continued to be paid at the existing in-network payment rates. We do not apply the balance billing prohibition to these covered services because it is our desire to encourage federally-administered enrollees to continue to seek treatment for these covered services from in network facilities and providers for the cost-containment reasons described above.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking and the 60-Day Delay in the Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 551, et seq.), a notice of proposed rulemaking and an opportunity for public comment are generally required before promulgation of a regulation. We also ordinarily provide a 60-day delay in the effective date of the provisions of a rule in accordance with the APA (5 U.S.C. 553(d)), which requires a 30-day delayed effective date and the Congressional Review Act (5 U.S.C. 801(a)(3)), which requires a 60-day delayed effective date for major rules.

However, this procedure can be waived if the agency, for good cause, finds that notice and public comment and delay in effective date are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. 5 U.S.C. 553(d)(3); 5 U.S.C. 808(2).

HHS has determined that issuing this regulation in proposed form, such that it would not become effective until after public comments are submitted, considered, and responded to in a final rule, would be impracticable and contrary to the public interest. The PCIP program is intended to provide benefits to eligible uninsured individuals with pre-existing conditions until 2014. However, the funding available to pay claims against, and the administrative costs of, the PCIP program is limited by statute, and HHS estimates that, at the current rate of expenditure, the aggregate amount needed for the payment of program expenses may be greater than the amount of remaining funding appropriated by the Congress to pay such expenses. Moreover, for individuals with pre-existing conditions enrolled in the PCIP program, the program may be their only available source of health coverage before prohibitions on discrimination by health insurance issuers based on pre-existing conditions go into effect in January 2014. It is critical to the continued sustainability of the program that the new payment rates go into effect as soon as operationally possible. A delay in the implementation of the new reimbursement rates beyond June 15, 2013 would risk program funds being exhausted prior to 2014.

We also believe that it would be impracticable and contrary to the public interest to delay the implementation of a policy that prohibits facilities and providers from billing federally-

administered PCIP enrollees for the difference between the plan allowance for most covered services and the amount they would otherwise charge for the covered services. The PCIP program is a program of last resort for individuals who, because of their pre-existing conditions, are either denied coverage in the individual market altogether, or can only obtain coverage that excludes their pre-existing condition (often at substantially higher premium rates than those paid by other individuals). The Affordable Care Act not only makes coverage available to these individuals until the more general pre-existing condition protections become available in 2014, but does so at a lower cost than they otherwise would likely have to pay if they did not have health coverage. Furthermore, if the network currently in place in the federally-administered PCIP became unavailable as a result of the new payment rates being set in this interim final rule, we are concerned that the balance billed charges could cause irreparable financial harm to enrollees and deter them from seeking services at all. Because we want not only to preserve the program benefit structure as intended by the Congress, but also meet the needs of enrollees in the federally-administered PCIP who expect that their out-of-pocket costs will be limited, we believe that it would be impracticable and contrary to the public interest to create a situation in which these enrollees are either deterred from seeking covered benefits under the program altogether, or are forced to pay substantially higher out-of-pocket costs than they would have otherwise had to pay absent our adoption of a policy prohibiting balance billing in this interim final rule.

For the foregoing reasons, we find good cause to waive the notice of proposed rulemaking and 60-day delay in the effective date and to issue this final rule on an interim basis.

We are providing a 60-day public comment period, and this regulation will be effective on June 15, 2013.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval.

We are not soliciting public comment on these issues addressed in this interim final rule because we are not making changes to the information collections associated with this program, which are covered under OMB Control Number OMB–0938–1100.

VI. Regulatory Impact Analysis

A. Summary and Need for Regulatory Action

Section 1101 of Title I of the Affordable Care Act requires that the Secretary establish, either directly or through contracts with states or nonprofit private entities, a temporary high risk pool program to provide affordable health insurance benefits to eligible uninsured individuals with pre-existing conditions. The Affordable Care Act envisions that this program will provide coverage to eligible uninsured individuals with preexisting conditions until 2014, when these individuals will begin to have access to a broader range of affordable health coverage options, including qualified health plans offered through new Health Insurance Exchanges established under sections 1311 or 1321 of the Affordable Care Act. An interim final rule published July 10, 2010 (75 FR 45014) set forth and addressed key issues regarding administration of the program, eligibility and enrollment, benefits, premiums, funding, appeals rules, and enforcement provisions related to anti-dumping and fraud, waste, and abuse. This interim final rule sets forth new payment rates that apply to most covered services with dates of service beginning June 15, 2013, in the federally-administered PCIP. Payment rates for covered services—with the exception of covered services furnished under the prescription drug, organ/tissue transplant, dialysis and durable medical equipment benefits will be—(1) 100 percent of Medicare payment rates; or (2) where Medicare payment rates cannot be implemented by the federally-administered PCIP, 50 percent of billed charges or a rate generated using a relative value scale pricing methodology. This interim final rule is an exercise of our authority to make program changes that we have determined are prudent and necessary to ensure that there is sufficient funding to pay for program expenses until 2014.

Additionally, to protect federally-administered PCIP enrollees from potentially becoming financially liable to pay significant costs for covered services as an unintended consequence of this interim final rule, we are adopting a policy that prohibits facilities and providers from billing an enrollee for the difference between the plan allowance for a covered service (with the exception of covered services furnished under the prescription drug, organ/tissue transplant, dialysis and durable medical equipment benefits) and the amount that they would otherwise charge for the covered service. In other words, facilities and providers that furnish covered services to federally-administered PCIP enrollees must accept, as payment in full, the plan allowance for most of those covered services (as determined by the Plan) and not bill the enrollee for an amount greater than the cost-sharing amount that the federally-administered PCIP has calculated for the covered service.

Executive Order 12866 explicitly requires agencies to take account of ''distributive impacts'' and ''equity.'' Setting the federally-administered PCIP payment rates applicable to most covered services with dates of service beginning on June 15, 2013, is prudent and necessary to ensure the PCIP program continues to provide benefits to enrolled individuals with pre-existing conditions who cannot obtain health coverage in the existing insurance market until 2014, when these individuals will begin to have access to a broader range of coverage options, including qualified health plans offered through new health insurance marketplaces established under sections 1311 or 1321 of the Affordable Care Act. Based on enrollment and claims data, current HHS estimates indicate that the aggregate amount needed to pay for PCIP expenses may be greater than the remaining funding appropriated by Congress to pay for such expenses until coverage under the program ends in 2014. Therefore, it is critical that we set the new payment rates and prohibit balance billing under the federally-administered PCIP as soon as operationally possible so that we can ensure that funding remains available to provide benefits to PCIP enrollees until 2014 and enrollees are protected from potentially significant out-of-pocket costs.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735), a ''significant'' regulatory action is subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule— (1) having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating

a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this regulation is economically significant within the meaning of section 3(f)(1) of the Executive Order, because it is likely to have an annual effect on the economy of $100 million in at least 1 year. Accordingly, OMB has reviewed this rule pursuant to the Executive Order.

HHS provides an assessment of the potential costs, benefits, and transfers associated with this interim final regulation, summarized in the following table.

TABLE 1.1— ACCOUNTING TABLE

Benefits:
Qualitative: The reduction in per-claim costs paid by the federally-administered Pre-Existing Condition Insurance Plan will help to ensure that the PCIP program can continue providing benefits to current enrollees who were previously denied health coverage due to their pre-existing condition. Facilities and providers serving enrollees in the Plan will continue to receive payment for such care, rather than risk receiving no payment for such care should they choose to continue treating the enrollee and PCIP program funding is exhausted prior to 2014.
Costs:
Qualitative: Health care facilities and providers will get paid less by the Plan for the same covered services, although given the small number of PCIP enrollees and large amount of uncompensated care that might otherwise be sought by these enrollees, we estimate this cost is minimal.

a. Estimated Number of Affected Entities

This interim final rule sets new payment rates for most covered services in the federally-administered Pre-Existing Condition Insurance Plan (PCIP) furnished beginning on June 15, 2013. It also prohibits a facility or provider from balance billing a federally-administered PCIP enrollee in most circumstances.

Only facilities and providers furnishing covered services to federally-administered PCIP enrollees will be affected by the new payment rates and prohibition on balance billing. Although payment rates will be reduced, facilities and providers choosing to continue to furnish covered services to PCIP enrollees will continue to receive payment, whereas in the absence of PCIP, they might not be able to continue treating the individuals unless they furnish uncompensated care. Although the federally-administered PCIP currently includes an in-network benefit, enrollees are also able to receive treatment out-of-network, thereby making it difficult to quantify the number of facilities and providers that will be affected by this interim final rule.

b. Benefits

A key premise for the establishment of the PCIP program was that those who are unable to purchase private health insurance coverage due to a pre-existing condition are potentially disadvantaged as a result of both poor health and loss of income. We expect that this interim final regulation will help more than 100,000 current enrollees continue to receive coverage until 2014. According to the 2009 report entitled ''Financial and Health Burden of Chronic Conditions Grow,'' released by the Center for Studying Health System Change, about 60 percent of the uninsured who have chronic conditions delay care or did not fill a prescription due to cost. Lack of health coverage often leads to significant medical debt, and uncompensated and expensive care at sites such as emergency rooms, shifting these costs in the health system to people with insurance coverage to offset the cost of this uncompensated care. Given these potential consequences of PCIP enrollees losing coverage and becoming uninsured prior to the coverage protections that will go into effect in 2014, this interim final regulation could generate significant benefits to enrolled individuals, for whom it will be possible to continue to be enrolled in the PCIP program. Absent this interim final rule, the PCIP program could exhaust its $5 billion in appropriated funding before the end of the program in 2014.

The Regulatory Impact Analysis included in the preamble to the 2010 PCIP interim final regulation included a discussion of the PCIP program's benefit to program-eligible individuals, as compared to the absence of the program. This interim final rule better ensures the continued existence of the program until 2014, as an alternative to the absence of the program during that time period. Therefore, we refer readers to the discussion of the benefits to program-eligible individuals that appears in the Regulatory Impact Analysis of the July 30, 2010 interim final regulation (75 FR 45026). These benefits could take the form of reductions in mortality and morbidity, reductions in medical expenditure risk, and increases in worker productivity. Each of these effects is described in that Regulatory Impact Analysis.

c. Costs and Transfers

Under Section 1101 of the Affordable Care Act, HHS is authorized to disperse $5 billion to pay claims and the administrative costs of the PCIP program that are in excess of premiums collected from enrollees.

There will be administrative costs associated with this interim final rule. The federally-administered PCIP claims processing contractor will incur minimal administrative costs to implement the payment rates required by this regulation to ensure that its systems are properly coded to pay the payment rates established under this interim final rule. This cost will be minimal because the claims processing contractor has an existing system in place to adjust its payment rates to reduce the payment rates to the amount specified.

This interim final rule will not increase or decrease costs to the federal government. The Congress appropriated $5 billion for the PCIP program, and HHS intends to spend that $5 billion for PCIP-related costs, although this regulation will change how a portion of the remaining $5 billion is distributed by spreading funding for the maximum period of time by setting new payment rates in the federally-administered PCIP.

With respect to other parties, we lack data with which to quantify costs associated with this regulation. Setting new payment rates for most covered services under the federally-administered PCIP program gives facilities and providers two choices. One choice is to continue to treat federally-administered PCIP enrollees and accept the payment rates set by this regulation as payment in full. We acknowledge that facilities and providers would, in general, be paid less to treat PCIP enrollees but we believe such cost is minimal (relative to facilities and providers' annual revenues). In the absence of this regulation, funding for the PCIP program may be exhausted prior to 2014, causing enrollees to seek from the same facilities and providers uncompensated and expensive care. Facilities and providers who furnish covered services to individuals enrolled in the federally-administered PCIP, the anticipated reduction in PCIP revenue per claim will not, in the aggregate, eliminate their overall PCIP revenue.

The other choice that facilities and providers have is to no longer treat PCIP enrollees. While we understand that the decision to no longer treat PCIP enrollees is possible, we believe and are hopeful that most facilities and providers will accept the new payment rates established in this interim final rule given the serious health conditions many federally-administered PCIP enrollees have and the prospect that such reduced payment is temporary until 2014 when no one can generally be denied health coverage because of a pre-existing condition. Facilities or providers who choose to not accept the payment rates established in this interim final rule could limit a federally-administered PCIP enrollee's ability to access health care services. However, this same possibility would occur if the PCIP program were to end before 2014. Lastly, because the PCIP program serves such a small population nationwide, and the program is temporary in nature, it is unlikely that a facility or provider's annual revenue would be significantly impacted by continuing to treat PCIP enrollees at the new payment rate. Therefore, we believe that this interim final regulation has minimal cost to such providers and facilities.

d. Conclusion

Under section 1101 of the Affordable Care Act, HHS is authorized to spend $5 billion for the purpose of funding the PCIP program. Implementing this interim final regulation, through which HHS is setting payment rates for most covered services under the federally-administered PCIP program to 100 percent of Medicare payment rates, may not impose any substantial financial costs on any parties.

For facilities and providers, the anticipated reduction in PCIP revenue per claim will likely be offset by the cost of uncompensated care in the absence of the PCIP program, a cost that facilities and providers would frequently incur if the PCIP program terminated earlier than 2014, due to funds being exhausted. Therefore, this interim final regulation has, in aggregate, minimal cost to such facilities and providers. By ensuing that coverage continues through the end of the year, when new options become available, the payment rates set forth in this interim final regulation will likely have a significant, positive financial impact on individuals enrolled in the program.

We anticipate that PCIP enrollees, who might otherwise lose their PCIP coverage will benefit from this interim final rule because they will be able to maintain their PCIP coverage. We also anticipate that ensuring the PCIP program's existence through 2014 will reduce the burden on local and state governments to pay health care facilities and providers for uncompensated care and prevent shifting of uncompensated care costs in the health system to people with insurance coverage to offset the cost of such uncompensated care.

VII. Other Sections

Regulatory Alternatives

Under the Executive Order, we must consider alternatives to issuing regulations and alternative regulatory approaches. This interim final rule sets payment rates for covered services in the federally-administered PCIP with dates of service beginning June 15, 2013 to reduce the rate of expenditures in order to eliminate the potential funding deficit estimated to occur in calendar year 2013. While other program modifications, as previously summarized, have been implemented to contain program costs, no other viable alternatives were identified that could substitute for the changes included in this interim final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies that issue a regulation to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as—(1) A proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' The Secretary certifies that this interim final rule will not have significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates would require certain spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $141 million.

UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of cost, mainly those ''federal mandate'' costs resulting from—(1) Imposing enforceable duties on state, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, state, local, or tribal governments under entitlement programs.

Under the Affordable Care Act, states (or their designated nonprofit, private entities) chose to contract with HHS to administer PCIP and receive federal funding for doing so. If they did not choose to administer a PCIP, HHS established a PCIP in the state. Thus, this interim final rule does not impose an unfunded mandate on states.

Enrolled individuals have to pay a premium and other out-of-pocket expenses to maintain their enrollment in a PCIP. However, individuals are free to disenroll based on their evaluation of the costs and benefits of remaining in the program. There is no automatic enrollment and no requirement to enroll or remain enrolled in a PCIP. Thus, this interim final rule does not impose an unfunded mandate on the private sector.

Federalism (Executive Order 13132)

Under the specific provisions of the Affordable Care Act, States or State-delegated non-profit entities are contractors of the HHS in the implementation of the PCIP program. HHS has given those contractors flexibility within the parameters provided by the Affordable Care Act and within the budgetary capacity of the program.

Congressional Review Act

This proposed regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq) and has been transmitted to the Congress and Comptroller General for review.

V. Statutory Authority

This interim final rule is adopted pursuant to the authority contained in section 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

List of Subjects in 45 CFR Part 152

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter B, part 152 as set forth below:

PART 152—PRE–EXISTING CONDITION INSURANCE PLAN PROGRAM

■ 1. The authority citation for part 152 continues to read as follows:

Authority: Sec. 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

■ 2. Section 152.21 is amended by adding paragraph (c) to read as follows.

§ 152.21 Premiums and cost-sharing.

* * * * *

(c) *Prohibition on balance billing in the PCIP administered by HHS.* A facility or provider that accepts payment under § 152.35(c)(2) for a covered service furnished to an enrollee may not bill the enrollee for an amount greater than the cost-sharing amount for the covered service calculated by the PCIP.

■ 3. Section 152.35 is amended by adding paragraph (c) to read as follows.

§ 152.35. Insufficient funds.

* * * * *

(c) *Payment rates for covered services furnished beginning June 15, 2013 to enrollees in the PCIP administered by HHS.* (1) Covered services furnished under the prescription drug, organ/tissue transplant, dialysis and durable medical equipment benefits will be paid at the payment rates that are in effect on June 15, 2013.

(2) With respect to all other covered services, the payment rates will be—

(i) 100 percent of Medicare payment rates; or

(ii) Where Medicare payment rates cannot be implemented by the federally-administered PCIP, 50 percent of billed charges or a rate using a relative value scale pricing methodology.

Dated: May 15, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: May 16, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–12145 Filed 5–17–13; 4:15 pm]

BILLING CODE 4150–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 14

[CG Docket No. 10–213; WT Docket No. 96–198; and CG Docket No. 10–145; FCC 13–57]

Accessibility Requirements for Internet Browsers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to implement section 718 of the Communications Act of 1934 (the Act), as amended, which was added to the Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). Section 718 of the Act requires Internet browsers built into mobile phones to be accessible to individuals who are blind or visually impaired. In this document, the Commission also affirms that section 716 of the Act requires certain Internet browsers used for advanced communications services to be accessible to people with disabilities.

DATES: Effective October 8, 2013.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov,* or Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2075 or email *Rosaline.Crawford@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report Order, document FCC 13–57, adopted on April 26, 2013, and released on April 29, 2013, in CG Docket No. 10–213, WT Docket No. 96–198, and CG Docket No. 10–145. The full text of document FCC 13–57 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document FCC 13–57 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/document/section-718-accessibility-requirements-internet-browsers-mobile.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 13–57 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

Synopsis

I. Introduction

1. In document FCC 13–57, the Commission implements section 718 of the Act, which was added by section 104 of the CVAA to ensure that people with disabilities have access to emerging and innovative advanced communications technologies. Section 718 of the Act requires mobile phone manufacturers and mobile service providers that include or arrange for the inclusion of an Internet browser on mobile phones to ensure that the functions of the included browser are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. In addition, in document FCC 13–57, the Commission affirms its previous conclusions regarding the coverage of Internet browsers used for ACS under section 716 of the Act, and retains the recordkeeping requirements and deadlines for entities covered under section 718 of the Act.

II. Background

2. On October 7, 2011, the Commission adopted rules, published at 76 FR 82353, December 30, 2011, implementing section 716 of the Act (also added by the CVAA), which requires advanced communications services (ACS) and equipment used for ACS to be accessible to and usable by individuals with disabilities, unless doing so is not achievable. 47 U.S.C. 617; 47 CFR 14.1—14.21 of the Commission's rules. The Commission also adopted rules to implement section 717, which establishes recordkeeping and enforcement requirements for entities covered under sections 255, 716, and 718 of the Act. 47 U.S.C. 618; 47 CFR 14.30—14.52 of the Commission's rules. In addition, the Commission adopted a Further Notice of

Proposed Rulemaking (*ACS FNPRM*), published at 76 FR 82240, December 30, 2011, that sought comment on rules to implement section 718. Among other things, the Commission raised the following issues in the *ACS FNPRM:* (1) Coverage of Internet browsers under section 716 and section 718; (2) the best ways to implement section 718 to achieve compliance by the time the provision goes into effect; (3) accessibility application programming interfaces (APIs); and (4) the recordkeeping requirements.

III. Coverage of Internet Browsers Under Section 716 and Section 718

A. General Coverage of Internet Browsers Under Section 716 of the Act

3. In document FCC 13–57, the Commission affirms its previous conclusion that equipment with manufacturer-installed or included Internet browsers used for ACS are encompassed within the term ''equipment used for ACS'' subject to section 716 of the Act. Likewise, the Commission affirms that an ACS provider is responsible for the accessibility of the underlying components of its service, including any software, such as an Internet browser, that it provides. Among other things, this means that the functions of an Internet browser—to enable users, for example, to input a uniform resource locator (URL) into the address bar; to identify and activate home, back, forward, refresh, reload, and stop buttons; to view status information; and to activate zooming or other features that are used for ACS—must be accessible to individuals with disabilities, unless doing so is not achievable.

4. In document FCC 13–57, the Commission concludes that Internet browsers do not ''pass through'' information to independent downstream devices, software, or applications, as that term is used in section 14.20(c) of the Commission's rules. Nevertheless, the Commission notes that covered entities are not relieved of their obligations to ensure the accessibility of browsers included by manufacturers or service providers under section 716 of the Act. For example, if a covered entity installs or directs the installation of an Internet browser, and the browser supports a specific web standard, approved standards recommendations, or technology that includes the capabilities to support accessibility features and capabilities, it must ensure that the Internet browser can use such capabilities contained in those standards or technologies to support the intended accessibility features and capabilities in the ACS web application retrieved and displayed by the browser, unless doing so is not achievable. To the extent that an included Internet browser does not support a particular technology that is needed to make web-based information available to the general public, the Commission declines to require covered entities to ensure that such browsers support the technology solely for the purpose of achieving accessibility.

B. Overlapping Coverage of Internet Browsers Under Sections 716 and 718 of the Act

5. In document FCC 13–57, the Commission finds that, with respect to individuals with disabilities generally, section 716(a) of the Act covers manufacturers of all equipment (including mobile phones) that include an Internet browser used for ACS, and section 716(b) of the Act covers ACS providers (including mobile service providers that provide ACS) that provide or require the installation and use of an Internet browser as an underlying component of their ACS. The Commission further finds that, specifically with respect to individuals who are blind or visually impaired, section 718 of the Act covers manufacturers of mobile phones that include an Internet browser used for any purpose, as well as mobile service providers who arrange for the inclusion of an Internet browser used for any purpose.

IV. Implementation of Section 718

6. Except as otherwise noted, in document FCC 13–57, the Commission adopts rules for section 718 of the Act that are analogous to the Commission's Part 14 rules implementing section 716. Specifically, the rules adopted define the terms ''accessible'' and ''usable'' as the Commission previously defined these terms when implementing sections 716(a)(1) and (b)(1) and sections 255(b) and (c) of the Act. The Commission also adopts key requirements similar to those in its section 255 and section 716 rules regarding product design, development, and evaluation. Entities subject to section 718 of the Act must consider performance objectives at the design stage as early as possible and identify barriers to accessibility and usability as part of their evaluation when considering implementation of the accessibility performance objectives. 47 CFR 14.20(a) and (b) of the Commission's rules. Entities subject to section 718 of the Act must also ensure that information and documentation that they provide to customers are accessible, if achievable. 47 CFR 14.20(d) of the Commission's rules.

7. The Commission declines to apply the information pass-through requirement in section 14.20(c) of the Commission's rules to entities covered under section 718 of the Act. Nevertheless, the Commission notes that covered entities are not relieved of their obligations under section 718 of the Act. A covered entity that installs or directs the installation of an Internet browser that supports a specific web standard, approved standards recommendations, or technology that includes the capabilities to support accessibility features and capabilities, must ensure that the Internet browser can use such capabilities contained in those standards or technologies to support the intended accessibility features and capabilities in the web application retrieved and displayed by the browser, unless doing so is not achievable. To the extent that an included Internet browser does not support a particular technology that is needed to make web-based information available to the general public, the Commission declines to require covered entities to ensure that such browsers support the technology solely for the purpose of achieving accessibility.

8. Section 716(g) of the Act defines the term ''achievable'' for the purposes of both section 716 and section 718 to mean ''with reasonable effort or expense, as determined by the Commission'' and requires consideration of four specific factors when making such determinations. In document FCC 13–57, the Commission defines and applies the term ''achievable'' to entities covered under section 718(a) of the Act in the same manner as this term is defined in section 716(g) of the Act and as it is applied to entities covered under sections 716(a)(1) and (b)(1) of the Act.

9. In document FCC 13–57, the Commission defines and applies the industry flexibility provisions contained in section 718(b) of the Act in the same manner as these provisions are defined and applied in sections 716(a)(2) and (b)(2) of the Act. These provisions allow industry the flexibility to satisfy their respective accessibility requirements with or without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment that are available to consumers at nominal cost and that individuals with disabilities can access.

10. The Commission does not apply the compatibility provision contained in section 716(c) of the Act—requiring that, if compliance with the accessibility

requirements for ACS and equipment used for ACS is not achievable, then such equipment or services must be compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless doing so is not achievable—to entities covered under section 718 of the Act, because there is no provision in section 718 parallel to section 716(c) of the Act that would demonstrate Congress's intent for such a requirement. However, the Commission notes that mobile phones that include Internet browsers are generally also subject to the compatibility requirements of section 716(c) of the Act to the extent the mobile phones are used for ACS, such as electronic messaging, and of section 255(d) of the Act to the extent the mobile phones are used for telecommunications service.

11. The Commission also does not apply the provisions in section 716 of the Act governing exemptions from the accessibility requirements for customized equipment or services, and waivers for small entities and multipurpose services and equipment to section 718 of the Act, because section 718 contains no parallel exemption or waiver provisions. Nevertheless, the Commission notes that an entity covered by section 718 of the Act may petition for a waiver of the Commission's rules implementing section 718 pursuant to the Commission's general waiver provisions contained at 47 CFR 1.3 of the Commission's rules.

V. Accessibility Application Programming Interfaces

12. An API is software that an application program uses to request and carry out lower-level services performed by the operating system of a computer or telephone. An accessibility API, in turn, is a specialized interface developed by a platform owner which can be used to communicate accessibility information about user interfaces to assistive technologies. Because there are various methods to achieve compliance with the section 718 of the Act requirements, and there is a need to afford covered entities flexibility on how to comply, the Commission, at this time, does not mandate that covered entities include accessibility APIs in mobile phones. Further, at this time, the Commission declines to establish the inclusion of an accessibility API in a mobile phone as a safe harbor for compliance with section 718 of the Act.

VI. Recordkeeping Requirements

13. Section 717(a)(5)(A) of the Act requires, beginning January 30, 2013, each manufacturer and service provider subject to sections 255, 716, and 718 of the Act to maintain records of its efforts to implement sections 255, 716, and 718, including the following: information about its efforts to consult with individuals with disabilities; descriptions of the accessibility features of its products and services; and information about the compatibility of its products and services with equipment commonly used by individuals with disabilities to achieve access. In October 2011, the Commission adopted recordkeeping requirements implementing this statutory requirement. In the *ACS FNPRM,* the Commission sought comment on whether these recordkeeping requirements should be retained or altered for entities covered under section 718 of the Act. In document FCC 13–57, the Commission retains the recordkeeping requirements as adopted and declines to delay implementation for entities covered under section 718 of the Act.

Final Regulatory Flexibility Analysis

14. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was included in the *ACS FNPRM* in CG Docket No. 10–213, WT Docket No. 96–198, and CG Docket No. 10–145. The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Second Report and Order

15. In document FCC 13–57, the Commission adopts rules to implement section 718 of the Act, which was added by the CVAA. Specifically, section 718(a) of the Act requires a mobile phone manufacturer that includes an Internet browser or a mobile phone service provider that arranges for an Internet browser to be included on a mobile phone to ensure that the browser functions are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. Under section 718(b) of the Act, mobile phone manufacturers or service providers may achieve compliance with or without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment. Congress provided that the effective date for these requirements is three years after the enactment of the CVAA, which is October 8, 2013.

16. In document FCC 13–57, the Commission finds that sections 716 and 718 of the Act, which were both adopted by the CVAA, have overlapping requirements. Specifically, section 716 of the Act applies to all Internet browsers that are built into equipment and used for ACS or that may be required to be installed by ACS equipment manufacturers or providers. Section 718 of the Act applies only to the discrete category of Internet browsers built into mobile phones used for any purpose (not just to access ACS) by a discrete group of individuals with disabilities, that is, people who are blind or have a visual impairment.

17. In document FCC 13–57, the Commission adopts rules for section 718 of the Act that are consistent with the Commission's rules implementing section 716 of the Act. 47 CFR 14.1–14.21 of the Commission's rules. For the purpose of applying section 718(a) of the Act, the terms ''accessible'' and ''usable'' are defined in the same manner as these terms are applied to entities covered under sections 716(a)(1) and (b)(1) of the Act. Because section 716(g) of the Act defines ''achievable'' for purposes of both sections 716 and 718, the Commission defines and applies the term ''achievable'' to entities covered under section 718 of the Act in the same manner as entities covered under section 716 of the Act. Because sections 716(a)(2) and (b)(2) of the Act are virtually identical to section 718(b) of the Act, the Commission defines and applies the industry flexibility provisions contained in section 718(b) of the Act in the same manner as these provisions are defined and applied in section 716 of the Act.

18. Section 716 of the Act includes specific exemptions for customized equipment or services, and gives the Commission authority to waive accessibility requirements for small entities and multipurpose services and equipment. Because section 718 of the Act contains no parallel exemption or waiver provisions, the Commission finds insufficient basis to establish similar exemptions and waiver provisions specific to the requirements of section 718 of the Act. Nevertheless, an entity covered by section 718 of the Act could petition for a waiver of the Commission's rules implementing section 718 pursuant to the Commission's general waiver provisions requiring petitioners to show good cause to waive the rules, and a showing that the particular facts of the petitioner's circumstances make compliance

inconsistent with the public interest. 47 CFR 1.3 of the Commission's rules.

19. In document FCC 13–57, the Commission also declines to require accessibility APIs because there are various methods to achieve compliance with the section 718 of the Act requirements, and there is a need to afford covered entities flexibility on how to comply. Lastly, in document FCC 13–57, the Commission retains the recordkeeping requirements previously adopted for manufacturers and service providers covered under section 718 of the Act. 47 CFR 14.31 of the Commission's rules.

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

20. No party filing comments in this proceeding responded to the IRFA in regard to implementation of section 718 of the Act, and no party filing comments in this proceeding otherwise addressed whether the policies and rules proposed in this proceeding regarding implementation of section 718 of the Act would have a significant economic impact on a substantial number of small entities.

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

21. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that face possible significant economic impact by the adoption of proposed rules. 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 that (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

22. The following entities have been identified as entities in which a majority of businesses in each category are estimated to be small. NAICS codes are provided where applicable.

- Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing (334220)
- Wireless Telecommunications Carriers (except satellite) (517210)

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. *Recordkeeping.* In document FCC 13–57, the Commission retains the recordkeeping requirements previously adopted, which requires, beginning January 30, 2013, that each service provider and each equipment manufacturer subject to sections 255, 716, and 718 of the Act maintain certain records. 47 CFR 14.31 of the Commission's rules. These records document the efforts taken by a manufacturer or service provider to implement sections 255, 716, and 718 of the Act, and specifically include: (1) Information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

24. *Annual Certification Obligations.* The CVAA and the Commission's rules require an officer of each service provider and equipment manufacturer subject to sections 255, 716, and 718 of the Act to submit to the Commission an annual certificate that records are kept in accordance with the above recordkeeping requirements. The certification must be filed with the Consumer and Governmental Affairs Bureau on or before April 1 each year for records pertaining to the previous calendar year. In document FCC 13–57, the Commission makes no changes to these requirements.

25. *Achievability Analysis.* Section 718(a) of the Act requires that the functions of Internet browsers included in mobile telephones ''are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. . . .'' Section 716(g) of the Act, in turn, defines achievable as meaning ''with reasonable effort or expense. . . .'' The statute goes on to provide a four factor test to assess achievability. Two of the factors—(1) the nature and costs of the steps needed to meet the requirements with respect to the specific equipment or service in question and (2) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies—specifically take into account the cost of meeting the requirements and the financial resources available to the equipment manufacturer or service provider. As a result, the initial cost of compliance is to perform the achievability analysis itself, which we estimate to be a small incremental cost when compared to the cost of developing the Internet browser. After the achievability analysis is conducted, the additional cost of making the equipment or service accessible to and usable by individuals who are blind or have a visual impairment is fact specific—it is dependent upon the design of the Internet browser and the accessibility features that are needed. In this regard, because the Internet browser is required to be accessible only if achievable, and because the achievability analysis takes into consideration the cost of providing accessibility as well as the financial resources of the manufacturer or service provider, the requirement to undertake an achievability analysis prevents the accessibility requirements adopted in document FCC 13–57 from having a significant economic impact on small entities.

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

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

27. In document FCC 13–57, the Commission continues and preserves the steps taken previously to minimize adverse economic impact on small entities. Specifically, in document FCC 13–57, the Commission continues to promote flexibility for all entities in several ways. The rules require covered entities to ensure that Internet browsers included in mobile phones are accessible, unless not achievable. This is a statutory requirement; therefore no alternatives were considered. However, this requirement has built-in flexibility. All entities, including small entities, may build accessibility features into the product or may rely on third party applications, peripheral devices, software, hardware, or customer

premises equipment to meet their obligations under section 718 of the Act, if achievable. Achievability is determined through a four factor analysis, described above. Through this analysis, an otherwise covered entity can demonstrate that accessibility is not achievable. Two of the four factors are particularly relevant to small entities: the nature and cost of the steps needed to meet the section 716 of the Act requirements and the technical and economic impact on the entity's operations. If achievability is overly expensive or has some significant negative technical or economic impact on a covered entity, the entity can show that accessibility was not achievable as a defense to a complaint. This achievability analysis, therefore, provides a statutorily based means of minimizing the economic impact of the CVAA's requirements on small entities.

28. The rules adopted in document FCC 13–57 require covered entities to consider performance objectives at the design stage as early and consistently as possible. This requirement is necessary to ensure that accessibility is considered at the point where it is logically best to incorporate accessibility. The CVAA and document FCC 13–57 are performance-driven and avoid mandating particular designs. Instead, they focus on an entity's compliance with the accessibility requirements through whatever means the entity finds necessary to make its product or service accessible, unless not achievable. This provides flexibility by allowing each entity, including small entities, to individually meet its obligations through what works best for that given entity (given the accessibility needs of the consumers being served), instead of mandating a rigid requirement that applies to all covered entities.

29. In document FCC 13–57, the Commission also leaves unchanged the requirements adopted previously that allow covered entities to keep records in any format they wish, because this flexibility affords small entities the greatest flexibility to choose and maintain the recordkeeping system that best suits their resources and their needs. The Commission found that this approach takes into account the variances in covered entities (*e.g.,* size, experience with the Commission), recordkeeping methods, and products and services covered by the CVAA. Moreover, the Commission found that it provided the greatest flexibility for small businesses and minimized the economic impact that the statutorily mandated requirements impose on small businesses. Correspondingly, the Commission considered and rejected the alternative of imposing a specific format or one-size-fits-all system for recordkeeping that could potentially impose greater burdens on small businesses. In addition, in document FCC 13–57, the Commission leaves unchanged the certification requirement, which is also required by the statute.

30. Although section 718 of the Act contains no exemption or waiver provisions comparable to those in section 716 of the Act, in document FCC 13–57, the Commission notes that an entity covered by section 718 of the Act may petition for a waiver of the Commission's rules implementing section 718 pursuant to the general waiver provisions in section 1.3 of the Commission's rules, which requires a showing of good cause to waive the rules, as well as a showing that particular facts make compliance inconsistent with the public interest. Section 1.3 of the Commission's rules therefore affords small entities additional compliance flexibility.

F. Federal Rules that May Duplicate, Overlap, or Conflict With Proposed Rules

31. Section 255(e) of the Act, as amended, directs the Architectural and Transportation Barriers Compliance Board (Access Board) to develop equipment accessibility guidelines ''in conjunction with'' the Commission, and periodically to review and update those guidelines. The Commission views the Access Board's current guidelines as well as its proposed guidelines as starting points for our interpretation and implementation of sections 716, 717, and 718 of the Act, as well as section 255 of the Act. As such, our rules do not overlap, duplicate, or conflict with either existing or proposed Access Board guidelines on section 255 of the Act.

Congressional Review Act

32. The Commission will send a copy of document FCC 13–57 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

33. Pursuant to sections 4(i), 303(r), 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 617, 618, and 619, document FCC 13–57 is hereby *adopted.*

List of subjects in 47 CFR Part 14

Advanced communications services equipment, Individuals with disabilities, Manufacturers of equipment used for advanced communications services, Providers of advanced communications services, Recordkeeping and enforcement requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 14 as follows:

PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

■ 1. The authority citation for part 14 is revised to read as follows:

Authority: 47 U.S.C. 151–154, 255, 303, 403, 503, 617, 618, 619 unless otherwise noted.

■ 2. Add subpart E to read as follows:

Subpart E—Internet Browsers Built Into Telephones Used With Public Mobile Services.

Sec.

§ 14.60 Applicability.

(a) This subpart E shall apply to a manufacturer of a telephone used with public mobile services (as such term is defined in 47 U.S.C. 710(b)(4)(B)) that includes an Internet browser in such telephone that is offered for sale or otherwise distributed in interstate commerce, or a provider of mobile services that arranges for the inclusion of a browser in telephones to sell or otherwise distribute to customers in interstate commerce.

(b) Only the following enumerated provisions contained in this part 14 shall apply to this subpart E.

(1) The limitations contained in § 14.2 shall apply to this subpart E.

(2) The definitions contained in § 14.10 shall apply to this subpart E.

(3) The product design, development and evaluation provisions contained in § 14.20(b) shall apply to this subpart E.

(4) The information, documentation, and training provisions contained in § 14.20(d) shall apply to this subpart E.

(5) The performance objectives provisions contained in § 14.21(a), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(2)(i), (b)(2)(ii), (b)(2)(iii), (b)(2)(vii), and (c) shall apply to this subpart E.

(6) All of subpart D shall apply to this subpart E.

§ 14.61 Obligations with respect to internet browsers built into mobile phones.

(a) *Accessibility.* If on or after October 8, 2013 a manufacturer of a telephone used with public mobile services includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable, except that this subpart shall not impose any requirement on such manufacturer or provider—

(1) To make accessible or usable any Internet browser other than a browser that such manufacturer or provider includes or arranges to include in the telephone; or

(2) To make Internet content, applications, or services accessible or usable (other than enabling individuals with disabilities to use an included browser to access such content, applications, or services).

(b) *Industry flexibility.* A manufacturer or provider may satisfy the requirements of this subpart with respect to such telephone or services by—

(1) Ensuring that the telephone or services that such manufacturer or provider offers is accessible to and usable by individuals with disabilities without the use of third-party applications, peripheral devices, software, hardware, or customer premises equipment; or

(2) Using third-party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

[FR Doc. 2013–12202 Filed 5–21–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 204

RIN 0750–AH80

Defense Federal Acquisition Regulation Supplement: Clarification of ''F'' Orders in the Procurement Instrument Identification Number Structure (DFARS Case 2012–D040)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update instructions for assigning basic and supplementary procurement instrument identification numbers.

DATES: *Effective:* May 22, 2013.

FOR FURTHER INFORMATION CONTACT: Fernell Warren, telephone 571–372–6089.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 77 FR 51957 on August 28, 2012, to update instructions for assigning basic and supplementary procurement instrument identification numbers (PIIN) by limiting the use of ''F'' in the 9th position of the PIIN to those orders and calls issued by DoD under indefinite delivery type contracts and agreements issued by departments or agencies outside the DoD. Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis of the Public Comments

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided.

A. Summary of Changes from the Proposed Rule

There were no changes made from the proposed rule as a result of the comments.

B. Analysis of public comments

1. Information technology

Comment: One respondent was concerned that if AbilityOne and FPI vendors were no longer identified by an ''F'' in the 9th position of the PIIN, field activities would no longer be able to pull data relating to these awards. The respondent asked what office would be responsible for retrieving such data, and whether a particular system, EProcurement/Records Management, allows for data retrieval via Data Universal Numbering System number and/or Commercial and Government Entity code.

Response: The ''F'' in the 9th position has not been exclusively utilized for AbilityOne and FPI awards; therefore retrieving data by the ''F'' in 9th position does not provide a sufficiently discrete result. DoD uses other data elements, such as specific DUNS numbers and validations from the Ability One Program, as indicators for awards to Federal Prison Industries and Ability One vendors.

2. Implementation impact

Comment: One respondent stated that standardizing identification systems would benefit DoD. However, the respondent was concerned that the rule could have an adverse impact on smaller, i.e. AbilityOne and FPI, vendors. The respondent inquired as to whether implementation of the rule would apply to existing awards, and if so, might cause an additional adverse impact.

Response: The revision of the use of ''F'' in PIINs will have no impact on the smaller AbilityOne and FPI vendors; it is simply an award identifier. DoD uses other data elements, such as specific DUNS numbers and validations from the Ability One Program, as indicators for awards to Federal Prison Industries and Ability One vendors. The final rule is a prospective change to DFARS. Existing award and order numbers will not be changed. DoD anticipates no adverse impacts from implementation of this rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities because it applies to a narrowly limited population of procurement actions however, a final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

This rule will clarify which contracts are to be coded with an ''F'' in the 9th position of the PIIN. It is not anticipated that the rule will impact small entities as it only impacts the internal operating procedures of the Government by specifying how the assigned PIIN is constructed for certain procurement actions. This change limits the use of ''F'' in the 9th position to task and delivery orders and calls issued under a non-DoD issued contract or agreement. As a result of the rule, new awards under the AbilityOne program and the FPI programs will no longer reflect an ''F'' in the 9th position of the in the PIIN. DoD uses other data elements, such as specific DUNS numbers and validations from the Ability One Program, as indicators for awards to Federal Prison Industries and Ability One vendors.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 204

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CRF part 204 as follows:

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.7003 is amended by revising paragraphs (a)(3)(iii) and (iv) to read as follows:

204.7003 Basic PII number.

(a) * * *

(3) * * *

(iii) Contracts of all types except indefinite-delivery contracts, sales contracts, and short form research contracts. Do not use this code for contracts or agreements with provisions for orders or calls.—C

* * * * *

(vi) Calls against blanket purchase agreements and orders under contracts (including Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts) and basic ordering agreements issued by departments or agencies outside DoD. Do not use the 'F' designation on DoD-issued purchase orders, contracts, agreements, or orders placed under DoD-issued contracts or agreements.—F

* * * * *

204.7004 Supplementary PII numbers (d)(2)(ii)

■ 3. Section 204.7004 is amended by revising paragraph (d)(2)(ii) to read as follows:

* * * * *

(d) * * *

(2) * * *

(ii) If an office is placing calls against non-DoD blanket purchase agreements or orders under non-DoD issued contracts (including Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts), or basic ordering agreements, the office shall identify the instrument with a 13 position supplementary PII number using an F in the 9th position. Do not use the same supplementary PII number with an F in the 9th position on more than one order. Modifications to these calls or orders shall be numbered in accordance with paragraph (c) of this section.

* * * * *

[FR Doc. 2013–12058 Filed 5–21–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective:* May 22, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS to correct typographical error at 204.1105 and to correct the clause date at 252.204–7004, 252.204–7007, 252.232–7006, 252.232–7011, and 252.245–7004.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 252 is amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.1105 [Amended]

■ 2. Amend section 204.1105 by removing the word ''clause'' and adding the word ''provision'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7004 [Amended]

■ 3. Section 252.204–7004 is amended by removing from the clause heading ''(DATE)'' and adding ''(MAY 2013)'' in its place.

252.204–7007 [Amended]

■ 4. Section 252.204–7007 is amended by removing ''(DATE)'' and adding ''(MAY 2013)'' in its place.

252.232–7006 [Amended]

■ 5. Section 252.232–7006 is amended by removing ''(DATE)'' and adding ''(MAY 2013)'' in its place.

252.232–7011 [Amended]

■ 6. Section 252.232–7011 is amended by removing ''(DATE)'' and adding ''(MAY 2013)'' in its place.

252.245–7004 [Amended]

■ 7. Section 252.245–7004 is amended by removing ''(DATE)'' and adding ''(MAY 2013)'' in its place.

[FR Doc. 2013–12205 Filed 5–21–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 227, and 252

RIN Number 0750–AG38

Defense Federal Acquisition Regulation Supplement; Government Support Contractor Access to Technical Data (DFARS 2009–D031)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2010 that provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.

DATES: *Effective:* May 22, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 76 FR 11363 on March 2, 2011, to implement section 821 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), enacted October 28, 2009. Section 821 provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.

The DFARS scheme for acquiring rights in technical data is based on 10 U.S.C. 2320 and 2321. Section 2320 establishes the basic allocation of rights in technical data, and provides, among other things, that a private party is entitled to restrict the Government's rights to release or disclose privately developed technical data outside the Government. This restriction is implemented in the DFARS as the ''limited rights'' license, which essentially limits the Government's use of such data only for in-house use and which does not include release to Government support contractors.

Historically, the statutorily based scheme has included only two categorical exceptions to the basic nondisclosure requirements for such privately developed data:

- A ''type'' exception, in which the Government is granted unlimited rights in certain types of ''top-level'' data that are not treated as proprietary (e.g., form, fit, and function data; data necessary for operation, maintenance, installation, or training; publicly available data) (2320(a)(2)(C)); and
- A ''special needs'' exception for certain important Government activities that are considered critical to Government operations (e.g., emergency repair and overhaul; evaluation by a foreign government), and are allowed only when the recipient of the data is made subject to strict nondisclosure restrictions on any further release of the data. (2320(a)(2)(D))

Section 821 amends 10 U.S.C. 2320 to add a third statutory exception to the prohibition on release of privately developed data outside the Government, allowing a covered Government support contractor access to and use of any technical data delivered under a contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates. The statute also provides a definition of ''covered Government support contractor.''

Four respondents submitted public comments in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

1. DoD has revised DFARS 227.7104(b) and the definition of ''Small Business Innovation Research (SBIR) data rights'' to clarify the Government's limited rights in technical data and restricted rights in computer software under the SBIR data rights license obtained under the clause at 252.227–7018.

2. DoD has deleted the requirement that the covered Government support contractor provide copies of any non-disclosure agreements (NDAs) executed with proprietary information owners, upon request of the Contracting Officer (see 209.505–4, 252.227–7013(b)(3)(iv)(E), 252.227–7014(b)(3)(iii)(E), 252.227–7015(b)(3)(v), 252.227–7018(b)(8)(v), 252.227–7025(b)(1)(ii)(E), and 252.227–7025(b)(4)(ii)(E)). This is not a statutory requirement, and the benefit to the Government in collecting these copies is outweighed by the administrative burden.

B. Analysis of Public Comments

1. Non-Disclosure Agreements (NDAs)

a. Timing of NDA

Comment: Two respondents suggested that proprietary information should not be disclosed to support contractors until after the owner is given notice an NDA is executed. The respondents stated that if the Government allows access to the proprietary information without an NDA in place, then the proprietary information owner ''loses the opportunity to enforce its rights'' and the covered Government support contractor would no longer be motivated to enter into an NDA.

DoD Response: A covered Government support contractor may not receive access to proprietary information in the absence of appropriate legally binding non-disclosure obligations. The Government's contract with a covered Government support contractor must always contain the clause at 252.227–7025, which places legally binding use and non-disclosure restrictions on the covered Government support contractor before it has access to any proprietary information. In addition, 252.227–7025(c) expressly confirms that the owner of the proprietary information is a third-party beneficiary of those use and non-disclosure obligations and has a direct cause of action against the covered Government support contractor for any breach of those obligations. Thus, the covered Government support contractor cannot receive any such proprietary information unless and until it is already subject to, at a minimum, the legally binding use and nondisclosure obligations of the clause at 252.227–7025, which also subjects the covered Government support contractor to a direct cause of action by the proprietary information owner.

b. Use and Non-Disclosure Agreement (DFARS 227.7103–7)

Comment: One respondent suggested that in addition to allowing a Contractor to enter an NDA with the covered Government support contractor or to

waive its right to an NDA, the contractor should be allowed, alternatively, to require the covered Government support contractor to execute the Use and Non-Disclosure Agreement in 227.7103–7.

DoD Response: The Use and Non-Disclosure Agreement at 227.7103–7 is an agreement between the Government and a private party, and is used only when the information is being provided to the private party outside of a contract that contains the clause at 252.227–7025. When the receiving party is a covered Government support contractor, then, by definition, the contract under which the information is being provided must contain the clause at 252.227–7025—or else the receiving contractor cannot qualify as a covered Government support contractor and would not be authorized to receive the proprietary information for that contract performance. Thus, in these cases, the clause at 252.227–7025 is already applicable and the NDA at 227.7103–7 is not to be used. Moreover, the 227.7103–7 NDA would be insufficient because it does not address the specialized restrictions for covered Government support contractors—because those restrictions are fully implemented in the clause at 252.227–7025, which must be in the contract in order for the recipient to qualify to receive the information as a covered Government support contractor.

c. Non-Disclosure Agreements That Exceed the Terms and Conditions of DFARS 252.227–7025

Comment: Two respondents suggested that the requirement, in the NDA between the contractor and the covered Government support contractor, prohibiting any additional terms and conditions over those present in 252.227–7025 without mutual agreement of the parties, would cause covered Government support contractors to ''balk'' at signing industry standard NDAs which most often include terms and conditions that are not included in 252.227–7025, and that the restrictions set forth in the clause ''do not make a legally sufficient document''. The respondents suggested removing the prohibition by providing language allowing additional terms and conditions.

One respondent also noted that an example of a restriction that is not included in the clause at 252.227–7025 but that is ''particularly important for enforcement'' of the proprietary information owner's rights, would be a requirement for the covered Government support contractor to have its employees sign individual NDAs containing materially similar terms.

DoD Response: Regarding the legal sufficiency and effect of 252.227–7025, that clause unequivocally establishes a legally sufficient and binding obligation on the recipient of the information, which expressly includes all of the restrictions provided in the statutory language, and which expressly affirms that the proprietary information owner is a third-party beneficiary of those clause obligations and thereby has a direct cause of action against the recipient of the proprietary information for any breach of those obligations. Additionally, the clause at 252.227–7025 requires that any such direct NDA between the covered Government support contractor and the proprietary information owner will ''implement'' the requirements of the clause at 252.227–7025, which would require, at a minimum, terms and conditions that are necessary to establish a legally sufficient NDA that covers all of the restrictions and obligations contained in the clause at 252.227–7025. Beyond those minimums, the parties are also free to negotiate for any additional terms and conditions by mutual agreement, but neither party can require the other to agree to a term or condition that is outside of those necessary to implement the 252.227–7025 requirements (which fully implement the statutory requirements).

DoD agrees with the respondent's suggestion that it is important to require the covered Government support contractor to ensure that its employees are subject to appropriate non-disclosure obligations, and observes that the obligations on the recipient contractor in the clause at 252.227–7025 do, in fact, create an obligation for that contractor to ensure that it implements the use and nondisclosure restrictions appropriately in the performance of its contractual duties, which would necessarily include ensuring that its employees who will have access or use of the proprietary information are subject to the applicable use and nondisclosure restrictions. However, to the extent that this may be viewed as an implicit obligation of the clause at 252.227–7025, and thus potentially could be overlooked or less than fully understood, such ambiguity must be eliminated. Accordingly, DoD has added a new paragraph (d) to 252.227–7025 to explicitly require the recipient contractor to ensure that its employees are subject to use and non-disclosure obligations prior to the employees being provided access to or use of the proprietary information.

d. Performance Assessments and Root Cause Analysis (PARCA) Activities

Comment: One respondent suggested that DoD's Performance Assessments and Root Cause Analysis (PARCA) activities related to utilizing a ''master NDA'' between the Government and support contractors to cover third-party proprietary earned value management data (wherein the data owner is a third-party beneficiary of the master NDA) may be inconsistent with the approach in this rule (i.e., which provides for individual ''direct'' NDAs between the support contractor and the proprietary information owner), and recommends internal DoD coordination to eliminate inconsistencies. The respondent acknowledged that although such earned value management data largely involves ''proprietary financial, business, and contract performance data and not Limited Rights Technical Data or Restricted Rights Software, it would be most beneficial to ensure consistency in the processes for disclosing both types of data.''

DoD Response: This rule requires the use of the clause at 252.227–7025 with all covered Government support contractors, which serves as a form of ''master NDA'' between the Government and the support contractor, in which the proprietary information owner is a third-party beneficiary of that NDA and thereby has a direct cause of action against the support contractor for any breach of the NDA requirements. However, as noted by the respondent, earned value management data does not include limited rights technical data or restricted rights computer software, and thus the PARCA efforts are outside the scope of this rule, as well as the underlying statutory obligations regarding a direct NDA between a covered Government support contractor and the proprietary information owner.

2. Notification Requirements

Comment: One respondent suggested that a covered Government support contractor should be obligated to notify the proprietary information owner upon first access to the proprietary information and annually thereafter.

DoD Response: The interim rule placed a direct obligation on the covered Government support contractor to notify the proprietary information owner upon first access to the proprietary information.

DoD has added at 252.227–7025(b)(5)(iii) a requirement to provide a thirty (30) day period within which the covered Government support contractor must notify the Contractor of the release or disclosure of the

Contractor's limited rights data to the covered Government support contractor. The thirty (30) day period will provide a reasonable time for notification.

The recommended annual notification requirement would place an onerous administrative burden on the covered Government support contractor. Accordingly, the final rule does not require an annual notification.

3. Use and Release Conditions

Comment: One respondent suggested that the use and release conditions that a covered Government support contractor must agree to, as set forth in 10 U.S.C. 2320 (f)(2)(A)–(E), be added to the definition of ''covered Government support contractor'' at 252.227–7013(a)(5)(ii), 252.227–7014(a)(6)(ii), 252.227–7015(a)(2)(ii), and 252.227–7018(a)(6)(ii).

DoD Response: These conditions are present in, and applied to all covered Government support contractors, at paragraph (b)(5) of 252.227–7025, which is a required clause for all contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, technical data marked with another contractor's restrictive legend(s) (see clause prescriptions at 227.7103–6 (c), 227.7104(f)(1) and 227.7203–6(d)). A support contractor cannot qualify as a covered Government support contractor unless it meets the definition of a ''covered Government support contractor,'' which requires that the clause at 252.227–7025 be included in the covered Government support contractor's contract and thereby applies all of the cited restrictions to the covered Government support contractor's use of the relevant data or software to perform that contract. This structure was used to include the substance of the applicable use and release conditions within the clause that serves to apply the restrictions to contractors of any and all types, including covered Government support contractors that are receiving such Government-furnished information (GFI). Thus, these restrictions are included in the definition of ''covered Government support contractor'' by cross-reference.

4. Access and Use Restrictions

a. Clarification

Comment: One respondent suggested that the rule should clarify the access and use restrictions on a covered Government support contractor by expressly citing the statutory purpose limitation of ''for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such [proprietary information] relates'' in the definitions of ''limited rights'' and ''restricted rights'' at DFARS 252.227–7013(a)(14)(i)(B)(*1*), 252.227–7014(a)(15)(vii), –7018(a)(15)(i)(B)(*1*), and 252.227–7018(a)(18)(vii), and in the corresponding limitations on the covered Government support contractor's access and use of such information at 252.227–7025(b)(5)(i).

DoD Response: The statutory purpose restrictions on the covered Government support contractor's access and use of such proprietary information are expressly incorporated at 252.227–7025(b)(5)(i) into the access and use restrictions on a covered Government support contractor for limited rights technical data and restricted rights computer software, and also for technical data related to commercial items.

However, DoD has clarified the definitions of ''limited rights'' and ''restricted rights'' to specify that the Government's authorized release to a covered Government support contractor is in the performance of a covered Government support contract (which necessarily contains the clause at 252.227–7025). Thus no further revisions are necessary. This structure was used to include the substance of the applicable use and release conditions within the clause that serves to apply the restrictions to the covered Government support contractors.

b. Covered Government Support Contractors' ''Access and Use'' of Proprietary Data

Comment: One respondent noted that the statute authorizes covered Government support contractors only to ''access and use'' the third party proprietary data, and suggested the deletion of the additional terms ''modify, reproduce, perform, display, release or disclose'' (or corresponding terms ''modification, reproduction, performance, display, release or disclose'') in several sections of the rule (e.g., 252.227–7013(a)(14)(i)(B)(*1*), 252.227–7014(a)(15)(vii), 252.227–7018(a)(15)(i)(B)(*1*) and (a)(18)(vii), and 252.227–7025(b)(4)(ii)(A)).

DoD Response: Independently of the subject matter of this rule, the statutory language at 10 U.S.C. 2320 and 2321 refer to a limited set of regulated activities relating to technical data (e.g., ''use'' and ''release'') However, in the detailed implementation of the statutory scheme, the DFARS utilizes a more complete set of verbs (e.g., ''use, modify, reproduce, modify, perform, display, release or disclose'') to ensure that all relevant activities are covered, including recognizing the inherent elements of a generic ''use'' that are expressly distinguished in the U.S. copyright laws (see, e.g., 17 U.S.C. 106). The rule uses this more complete and detailed set of verbs to be consistent with long-standing conventions in implementing these statutory requirements. In addition, all of the covered activities are subject to the numerous restrictions and safeguards that are implemented to protect the interests of the owner of the proprietary data.

5. Authorized Person

Comment: Two respondents noted that in the definitions of ''limited rights'' and ''restricted rights'' the covered Government support contractor is authorized to release the proprietary information to an ''authorized person'' in performing the covered Government support contractor's contract (see DFARS 252.227–7013(a)(14)(i)(B)(*1*), 252.227–7014(a)(15)(vii) and 252.227–7018(a)(15)(i)(B)(*1*)). The respondents suggested that the term ''authorized person'' be defined to ''limit the support contractor's right to release or disclose—to within the support contractor's organization, and only for the performance of the support contract'' or ''only to the Government, the contractor that owns the proprietary data, or parties the support contractor has confirmed have entered a non-disclosure agreement, license, subcontract, or other agreement giving the owning parties' permission for such disclosure.''

DoD Response: To make the reference to ''authorized person'' more clear, DoD has replaced the reference to an ''authorized person'' that was used in the interim rule definitions of ''limited rights'' and ''restricted rights'' with the more definitive and accurate phrases ''a person authorized to receive limited rights technical data'' and ''a person authorized to receive restricted rights computer software,'' respectively.

6. Definition of ''Restricted Rights''

Comment: One respondent noted that the rule makes revisions to the coverage for restricted rights noncommercial computer software that are analogous to the revisions for limited rights technical data, but recommends revisions to recognize certain important differences between restricted rights computer software and limited rights technical data (e.g., that the Government's rights to use and reproduce restricted rights software are proscribed differently and

to a greater extent than for limited rights technical data). The respondent recommends revisions to ensure that the covered Government support contractor's authorized use of restricted rights software is subject to all of the restrictions that apply to the Government's use (while retaining the additional restrictions that further restrict the covered Government support contractor's activities).

DoD Response: DoD has revised the definition of ''restricted rights'' to address the concerns raised by the respondent, ensuring that the covered Government support contractor's authorized uses are no greater than the uses authorized for the Government (see 252.227–7014(a)(15)(v)(D), (vi)(C), and (vii); and 252.227–7018(a)(18)(iv)(B), (v)(D), (vi)(C), and (vii)).

7. Covered Government Support Contractor Organizational Conflict of Interest

Comment: One respondent noted that the rule covers situations in which a covered Government support contractor could be in competition with a contractor-owner of proprietary data by prohibiting the support contractor from using that data to compete for any contracts, but this does not cover a support contractor that may not be considered to be in competition, but that would have access to such proprietary information in the course of advising the Government on overall acquisition strategies. The respondent recommends that the rule be revised to specifically prohibit such a support contractor from using the data to advise the Government on acquisition strategies or overall strategies in way that would benefit the support contractor.

One respondent commented that the interim rule seemed to conflict with DoD guidance regarding organizational conflicts of interest, observing that one part of a large defense contractor might provide Government support contracting services thus creating opportunities for that contractor to obtain proprietary data of competitors. The respondent stated that only in limited circumstances on a case-by-case basis should support contractors be looking at proprietary information from other contractors and noted that a more appropriate solution might be to reduce DoD dependence on contractors.

DoD Response: Independently of this rule, the organizational conflict of interest rules restrict a support contractor, including a covered Government support contractor, from advising the Government on acquisition strategies or overall strategies, or any other matter, in which the support contractor would have a financial or other interest (i.e., that would qualify as an organizational conflict of interest). Those prohibitions and restrictions apply regardless of whether the advising support contractor would have access to any third party proprietary data in the course of such advising. This rule supplements those existing organizational conflict of interest restrictions by adding layers of restriction, and additional safeguards, to ensure that any covered Government support contractor's access to a third party proprietary data does not result in any competitive harm to the third party data owner.

The rule implements the statutory prohibition against covered Government support contractors having affiliations with the prime and first-tier subs, or any direct competitor of the prime or such first-tier sub and reflects the policy determinations inherent in the statute. Alteration of DoD policy regarding the extent of DoD reliance on contractors is beyond the scope of rulemaking for this statutory implementation.

8. Lower-Tier Subcontractor Affiliations

Comment: One respondent commented that the definition of ''covered Government support contractor'' is limited to preclude affiliation only with the prime and first-tier subcontractors on the relevant program(s), and suggested that support contractors that are not covered by the rule can have affiliations to lower-tier subcontractors and would not be subject to the requirement to sign the direct NDA. The respondent suggested that the rule should be amended to bring such support contractors under the requirement to sign the direct NDA.

DoD Response: The prohibition against covered Government support contractors having affiliations with the prime and first-tier subcontractors is a substantive limitation from the statutory definition of ''covered Government support contractor.'' Changing the scope of the definition to prohibit affiliations at lower tiers would narrow the scope of the definition of ''covered Government support contractor'' in a manner that is inconsistent with the statute. The statutory scheme permits affiliations at lower tiers, but established numerous restrictions and protections to ensure that the covered Government support contractor's access to proprietary information does not result in competitive harm. This scheme is reinforced in all cases by the rules and restrictions against organizational conflicts of interest. Thus, a support contractor with affiliations at lower tiers may still qualify as a covered Government support contractor if it meets all other definitional criteria (see 252.227–7013(a)(5), 252.227–7014(a)(6), 252.227–7015(a)(2), and 252.227–7018(a)(6)), but in all such cases the covered Government support contractor would be subject to the obligations regarding direct NDAs (see 252.227–7025(b)(1)(ii)(D), (b)(4)(ii)(D), and (d)). If a support contractor is not covered by the rule (i.e., does not meet the definition of ''covered Government support contractor''), then that support contractor would not be subject to that direct NDA requirement, but that is because the support contractor would not be authorized to receive the proprietary information as a covered Government support contractor in the first place. It is impossible under this rule for a covered Government support contractor to be authorized to receive such proprietary information and not to be subject to the obligations regarding direct NDAs.

9. DFARS Coverage at 209.5

Comment: One respondent commented that it was not clear if the language of DFARS 209.505–4(b) of the interim rule was meant to be a replacement or supplement for FAR 9.505–4(b). The respondent also commented that DFARS 209.505–4(b) covers all proprietary information, whereas the revisions to 10 U.S.C. 2320 cover only technical data and the proposed revisions cover both cases.

DoD Response: The DFARS text at 209.505–4(b) addresses DoD-specific requirements and procedures applicable only to third party proprietary technical data and computer software being accessed by DoD contractors, including covered Government support contractors, which provides specific coverage for a subset of the more generic coverage in the FAR. In DoD, the unmodified FAR coverage still applies to DoD contractors accessing other types of proprietary information in the performance of their contracts. The numbering is consistent with DFARS drafting conventions.

10. Commercial Restrictive Legend

Comment: With respect to DFARS 252.227–7025(b)(4)(i), one respondent commented that there is no requirement for a commercial restrictive legend in 10 U.S.C. 2320 or DFARS 252.227–7015, nor is that term defined in the interim rule. The respondent suggested deletion of all references to a commercial restrictive legend.

DoD Response: It is correct that neither 10 U.S.C. 2320 nor DFARS 252.227–7015 provides the specific

form, content, or format for a restrictive legend on technical data related to commercial items (or technical data that is a commercial item). However, in accordance with 252.227–7015(d), the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under a contract, shall have no liability for any release or disclosure of technical data that are not ''marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.'' In addition, although not included as a separate definition in the paragraph (a) definitions section of the clause at 252.227–7025, the reference to ''commercial restrictive legend'' is defined parenthetically at 252.227–7025(b)(4)(i) as ''(i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions).''

11. Technical Correction

Comment: One respondent commented that in the interim rule, the definitions of ''limited rights,'' ''restricted rights,'' and ''government purpose rights'' were renumbered in DFARS 252.227–7013(a) and 252.227–7014(a), but the renumbering was not accommodated in 252.227–7013(b)(4) and 252.227–7014(b)(4) in an apparent drafting error. This had the effect of making government purpose rights the minimum rights that must be provided to the Government in Specially Negotiated License Rights.

DoD Response: The respondent is correct. DoD issued a technical amendment on February 24, 2012, to correct the text of 252.227–7013(b)(4) and (b)(6), and 252.227–7014(b)(4) and (b)(6) to refer respectively to 252.227–7013(a)(14) (limited rights) and 252.227–7014(a)(15) (restricted rights) (see 77 FR 10976). DoD also corrected paragraph references in 252.227–7013(b)(2)(i)(A).

B. Other changes

1. Conforming changes are made to paragraphs (b)(20), (b)(21), (c)(2) and (c)(3) of the clause at 252.212–7001, ''Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items,'' to update the cross-references to the clauses modified by this final rule.

2. 252.227–7025(b)(1)(ii) and 252.227–7025(b)(4)(ii) now reference a new paragraph (b)(5), to avoid repetition of the restrictions in each location. The restrictions regarding GFI marked with limited or restricted rights legends and GFI marked with commercial restrictive legends respectively are revised for clarity.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review by the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement DFARS) to implement section 821 of the National Defense Authorization Act for Fiscal Year 2010. Section 821 provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.

No public comments were received in response to the initial regulatory flexibility analysis.

No comments were received from the Chief Counsel for Advocacy of the Small Business Administration in response to the rule. The rule affects small businesses that are Government support contractors that need access to proprietary technical data or computer software belonging to prime contractors and other third parties. It will also affect any small business that is the owner of ''limited rights'' technical data or restricted rights computer software in the possession of the Government to which the support contractor will require access.

The rule imposes no reporting, recordkeeping, or other information collection requirements. However, the statute provides that the support contractor must be willing to sign a nondisclosure agreement with the owner of the data. The rule has implemented this requirement in a way that preserves maximum flexibility for the private parties to reach mutual agreement without unnecessary interference from the Government. To reduce burdens, the rule permits the owner of the data to waive the requirement for a nondisclosure agreement, since the Government clauses already adequately deal with non-disclosure. Further, the rule provides that the support contractors cannot be required to agree to any conditions not required by statute. In the final rule, DoD has deleted the requirement to provide a copy of the non-disclosure agreement or waiver to the contracting officer, upon request.

Other than the alternatives already addressed, there are no known significant alternatives to the rule that would meet the requirements of the statute and minimize any significant economic impact of the rule on small entities. The impact of this rule on small business is not expected to be significant because the execution of a non-disclosure agreement is not likely to have a significant cost or administrative impact.

V. Paperwork Reduction Act

The rule imposes no new reporting, recordkeeping, or other information collection requirements. DFARS clauses 252.227–7013, 252.227–7014, 252.227–7015, and 252.227–7025 contain reporting or recordkeeping requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35. However, these clauses are already covered by an approved OMB control number 0704–0369 in the amount of approximately 1.76 million hours.

List of Subjects in 48 CFR Parts 209, 227, and 252

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System

Therefore, DoD amends 48 CFR parts 209, 227, and 252 as follows:

■ 1. The authority citation for parts 209 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Section 209.505–4 is revised to read as follows:

209.505–4 Obtaining access to proprietary information.

(b) For contractors accessing third party proprietary technical data or computer software, non-disclosure requirements are addressed at 227.7103–7(b), through use of the clause at 252.227–7025 as prescribed at 227.7103–6(c) and 227.7203–6(d). Pursuant to that clause, covered Government support contractors may be required to enter into non-disclosure agreements directly with the third party asserting restrictions on limited rights technical data, commercial technical data, or restricted rights computer software. The contracting officer is not required to obtain copies of these agreements or to ensure that they are properly executed.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 3. The authority citation for Part 227 is amended by removing citation ''41 U.S.C. 421 and 48 CFR Chapter 1'' and adding citation ''41 U.S.C. 1303 and 48 CFR Chapter 1'' in its place.

227.7103–5 [Amended]

■ 4. Section 227.7103–5 paragraph (c)(2) is amended by inserting a comma after the word ''release''.

■ 5. Section 227.7104 is amended by revising paragraph (b) and (c) to read as follows:

227.7104 Contracts under the Small Business Innovation Research (SBIR) Program.

(a) * * *

(b) Under the clause at 252.227–7018, the Government obtains SBIR data rights in technical data and computer software generated under the contract and marked with the SBIR data rights legend. SBIR data rights provide the Government limited rights in such technical data and restricted rights in such computer software during the SBIR data protection period commencing with contract award and ending five years after completion of the project under which the data were generated. Upon expiration of the five-year restrictive license, the Government has unlimited rights in the SBIR technical data and computer software.

(c) During the SBIR data protection period, the Government may not release or disclose SBIR technical data or computer software to any person except as authorized for limited rights technical data or restricted rights computer software, respectively.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 6. Section 252.212–7001 is amended—

■ a. By removing the clause date ''(FEB 2013)'' and adding ''(MAY 2013)'' in its place;

■ b. In paragraph (b)(20), by removing the clause date ''(FEB 2012)'' and adding ''(MAY 2013)'' in its place;

■ c. In paragraph (b)(21), by removing the clause date ''(DEC 2011)'' and adding ''(MAY 2013)'' in its place;

■ d. In paragraph (c)(2,) by removing the clause date ''(FEB 2012)'' and adding ''(MAY 2013)'' in its place; and

■ e. In paragraph (c)(3,) by removing the clause date ''(DEC 2011)'' and adding ''(MAY 2013)'' in its place.

252.227–7013 [Amended]

■ 7. Section 252.227–7013 is amended—

■ a. By removing the clause date ''(FEB 2012)'' and adding ''(MAY 2013)'' in its place;

■ b. By revising paragraph (a)(14)(i)(B)(1); and (b)(3)(iv) to read as follows:

252.227–7013 Rights in Technical Data—Noncommercial Items.

* * * * *

(a) * * *

(14) * * *

(i) * * *

(B) A release or disclosure to—

(*1*) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

* * * * *

(b) * * *

(3) * * *

(iv) The Contractor acknowledges that—

(A) Limited rights data are authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

* * * * *

252.227–7014 [Amended]

■ 8. Section 252.227–7014 is amended—

■ a. By removing the clause date ''(FEB 2012)'' and adding ''(MAY 2013)'' in its place;

■ b. By revising paragraph (a)(15); and (a)(16)(b)(iii) to read as follows:

252.227–7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

* * * * *

(a) * * *

(15) ''Restricted rights'' apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), (vi) and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of

this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

(16) * * *

(b) * * *

(3) * * *

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

* * * * *

■ 9. Section 252.227–7015 is amended—

■ a. By removing the clause date ''(DEC 2011)'' and adding ''(MAY 2013)'' in its place;

■ b. By revising paragraph (b)(3) to read as follows:

252.227–7015 Technical Data—Commercial Items.

* * * * *

(b) * * *

(3) The Contractor acknowledges that—

(i) Technical data covered by paragraph (b)(2) of this clause are authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

* * * * *

■ 10. Section 252.227–7018 is amended—

■ a. By removing the clause date ''(MAR 2011)'' and adding ''(MAY 2013)'' in its place;

■ b. By revising paragraphs (a)(15); (a)(18); (a)(19); (b)(4); (b)(5); and (b)(8) to read as follows:

252.227–7018 Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

(a) * * *

(15) ''Limited rights'' means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Government support contractor in performance of its covered Government support contracts for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(*2*) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

* * * * *

(18) ''Restricted rights'' apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(18)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(18)(ii), (v), (vi), and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the non-disclosure agreement at 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of Government contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iv) of this clause.

(19) ''SBIR data rights'' means the Government's rights during the SBIR data protection period (specified in paragraph (b)(4) of this clause) to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated a SBIR award as follows:

(i) Limited rights in such SBIR technical data; and

(ii) Restricted rights in such SBIR computer software.

* * * * *

(b) * * *

(4) *SBIR data rights.* Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (b)(1) of this clause, the Government shall have SBIR data rights in all technical data or computer software generated under this contract during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.

(5) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(4) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software than are enumerated in paragraph (a)(18) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(6) * * *

(7) * * *

(8) *Covered Government support contractors.* The Contractor acknowledges that—

(i) Limited rights technical data and restricted rights computer software are authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions as identified in a restrictive legend) regarding the covered Government support contractor's use of such data or software, or alternatively that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data or software as set forth in the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

* * * * *

252.227–7025 [Amended]

■ 11. Section 252.227–7025 is revised as follows:

252.227–7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

As prescribed in 227.7103–6(c), 227.7104(f)(1), or 227.7203–6(d), use the following clause:

Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (May 2013)

(a)(1) For contracts in which the Government will furnish the Contractor with technical data, the terms ''covered Government support contractor,'' ''limited rights,'' and ''Government purpose rights'' are defined in the clause at 252.227–7013, Rights in Technical Data–Noncommercial Items.

(2) For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms ''covered Government support contractor,'' ''government purpose rights,'' and ''restricted rights'' are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

(3) For Small Business Innovation Research program contracts, the terms ''covered Government support contractor,'' ''limited rights,'' ''restricted rights,'' and ''SBIR data rights'' are defined in the clause at 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited rights, restricted rights, or SBIR data rights legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR technical data or computer software received with SBIR data rights legends (during the SBIR data protection period) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause

(2) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103–7.

(3) *GFI marked with specially negotiated license rights legends.*

(i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at 227.7103–7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) *GFI technical data marked with commercial restrictive legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause

(5) *Covered Government support contractors.* If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii) of this clause, the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within thirty (30) days of the Contractor's access or use of such data or software;

(iv) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to—

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(c) *Indemnification and creation of third party beneficiary rights.* The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure

of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(d) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.

[FR Doc. 2013–12055 Filed 5–21–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC675

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), May 18, 2013, through 1200 hours, A.l.t., July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 296 metric tons as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013), for the period 1200 hours, A.l.t., April 1, 2013, through 1200 hours, A.l.t., July 1, 2013.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 16, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 17, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–12195 Filed 5–17–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 99
Wednesday, May 22, 2013

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0448; Directorate Identifier 2013–CE–007–AD]

RIN 2120–AA64

Airworthiness Directives; Eclipse Aerospace, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Eclipse Aerospace, Inc. Model EA500 airplanes equipped with Avio, Avio with ETT, or Avio NG 1.0 avionics suites. This proposed AD was prompted by a report of potential aircraft hardware failure in the autopilot control panel and the center switch panel. This proposed AD would require either incorporating updates to the aircraft computer system or incorporating a temporary revision to the aircraft flight manual. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 8, 2013.

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

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

For service information identified in this proposed AD, contact Eclipse Aerospace, Inc. 26 East Palatine Road, Wheeling, Illinois 60090; telephone: (877) 373–7978; Internet: *www.eclipse.aero.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Scott Fohrman, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; phone: (847) 294–7136; fax: (847) 294–7834; email: *scott.fohrman@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0448; Directorate Identifier 2013–CE–007–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 have received a report from Eclipse Aviation, Inc. that there is a potential problem with the hardware/software combination within the autopilot control panel and/or center switch panel on all Model EA500 airplanes equipped with Avio, Avio with ETT, or Avio NG 1.0 avionics suites that could result in uncommanded fire suppression system activation and simultaneous shutdown of both engines.

This condition, if not corrected, could cause dual engine failure and result in loss of control.

Relevant Service Information

We reviewed Eclipse Aerospace, Inc. Mandatory Service Bulletin Number SB 500–31–014, Rev. A, dated February 15, 2011, and Eclipse Aerospace, Inc. Mandatory Service Bulletin Number SB 500–31–019, Rev B, dated March 13, 2013. These service bulletins describe procedures for updating the aircraft computer system for all affected airplanes. We have also reviewed Eclipse Aerospace, Inc. Mandatory Service Bulletin Number SB 500–31–026, Rev. A, dated November 6, 2012. This service bulletin described procedures for updating the aircraft flight manual (AFM) for affected airplanes equipped with NG 1.0 avionics suites.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Eclipse Aerospace, Inc. Mandatory Service Bulletin Number SB 500–31–026, Rev. A, dated November 6, 2012, which applies only to airplanes equipped with NG 1.0 avionics suites, requires incorporating a temporary revision into the AFM and incorporating an update to the aircraft computer system (ACS) hardware with monthly data uploads to Eclipse Aerospace, Inc. until the ACS software is updated.

Specifically, the AFM revision requires an altered engine start and emergency procedures checklist.

This proposed AD would allow doing either the AFM revision or the ACS software update.

Costs of Compliance

We estimate that this proposed AD affects 81 airplanes of U.S. registry. There are 38 of the affected airplanes equipped with Avio or Avio ETT avionics suites and 43 of the affected airplanes equipped with NG 1.0 avionics suites.

We estimate the following costs to comply with this proposed AD. Airplanes equipped with NG 1.0 avionics suites would be allowed do either the AFM update or the ACS update:

ESTIMATED COSTS FOR AIRPLANES EQUIPPED WITH AVIO OR AVIO ETT AVIONICS SUITES

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Aircraft computer system update for airplanes equipped with Avio or Avio ETT avionics suites.	.5 work-hour × $85 per hour = $42.50.	$1,950	$1,992.50	$1,992.50 × 38 affected airplanes = $75,715.00.

ESTIMATED COSTS FOR AIRPLANES EQUIPPED WITH NG 1.0 AVIONICS SUITES

[It would require either the AFM update OR the ACS update]

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Flight manual update for airplanes equipped with NG 1.0 avionics suites.	.5 work-hour × $85 per hour = $42.50.	Not applicable ..	$42.50	$42.50 × 43 affected airplanes = $1,827.50.
OR				
Aircraft computer system update for airplanes equipped with NG 1.0 avionics suites.	.5 work-hour × $85 per hour = $42.50.	$37,000	$37,042.50	$37,042.50 × 43 affected airplanes = $1,592,827.50.

Incorporating the flight manual update represents a terminating action for AD compliance without imposing any limitations on aircraft operations. It is the operator's choice to incorporate either the flight manual update or the software update.

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),

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

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

List of Subjects in 14 CFR Part 39

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

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 airworthiness directive (AD):

Eclipse Aerospace, Inc.: Docket No. FAA–2013–0448; Directorate Identifier 2013–CE–007–AD.

(a) Comments Due Date

We must receive comments by July 8, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Eclipse Aerospace, Inc. Model EA500 airplanes, all serial numbers, that are certificated in any category, and are equipped with:

(1) Avio avionics suites; or

(2) Avio with ETT avionics suites; or

(3) Avio NG 1.0 avionics suites.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code, Code 23: Communications.

(e) Unsafe Condition

This AD was prompted by a report of potential aircraft hardware failure in the autopilot control panel and the center switch panel. We are issuing this AD to prevent failure of the hardware/software combination within the autopilot control panel and/or center switch panel, which could result in uncommanded fire suppression system activation and simultaneous shutdown of both engines.

(f) Compliance

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

(g) Update Aircraft Computer Software (ACS)

(1) *For airplanes equipped with Avio or Avio with ETT avionics suites:* Within 6 calendar months after the effective date of this AD, update the ACS following paragraphs 3.A. through 3.C. of the Accomplishment Instructions in Eclipse Aerospace, Inc. Mandatory Service Bulletin Number SB 500–31–014, Rev. A, dated February 15, 2011.

(2) *For airplanes equipped with NG 1.0 avionics suites:* Within 6 calendar months after the effective date of this AD, do one of the following:

(i) Insert airplane flight manual Temporary Revision (TR) 016 into the Limitations section of the airplane flight manual following paragraph 3.B.(1)(a) of the Accomplishment Instructions in Eclipse Aerospace, Inc. Mandatory Service Bulletin Number SB 500–31–026, Rev. A, dated November 6, 2012; or

(ii) Update the ACS following paragraphs 3.A. through 3.C. of the Accomplishment Instructions in Eclipse Aerospace, Inc. Mandatory Service Bulletin Number SB 500–31–019, Rev. B, dated March 13, 2013.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Scott Fohrman, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; phone: (847) 294–7136; fax: (847) 294–7834; email: *scott.fohrman@faa.gov.*

(2) For service information identified in this AD, contact Eclipse Aerospace, Inc., 26 East Palatine Road, Wheeling, Illinois 60090; telephone: (877) 373–7978; Internet: *www.eclipse.aero.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 15, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–12142 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–6–000]

Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) proposes to remand the proposed interpretation of Reliability Standard BAL–002–1, Disturbance Control Performance, Requirements R4 and R5, submitted to the Commission for approval by the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization. Specifically, the interpretation addresses whether Balancing Authorities and Reserve Sharing Groups are subject to enforcement actions for failing to restore Area Control Error within the 15-minute Disturbance Recovery Period for Reportable Disturbances that exceed the most severe single Contingency. The Commission proposes to remand the proposed interpretation because it changes a requirement of the Reliability Standard, thereby exceeding the permissible scope for interpretations.

DATES: Comments are due July 8, 2013.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Mark Bennett (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. (202) 502–8524. *mark.bennett@ferc.gov.*

Syed Ahmad (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. (202) 502–8718. *syed.ahmad@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

(Issued May 16, 2013)

1. Under section 215 of the Federal Power Act (FPA), the Commission proposes to remand the proposed interpretation of Reliability Standard BAL–002–1, Disturbance Control Performance, Requirements R4 and R5 submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). Specifically, the interpretation addresses whether Balancing Authorities and Reserve Sharing Groups are subject to compliance enforcement actions for failing to restore Area Control Error (ACE) within the 15-minute Disturbance Recovery Period for Reportable Disturbances that exceed the most severe single Contingency (MSSC). For the reasons explained below, the Commission proposes to remand the proposed interpretation because it changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations. The Commission seeks comments on its proposal.

I. Background

A. Section 215 of the FPA and Standards Development Process

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public

interest.[1] Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[2] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[3] and subsequently certified NERC.[4]

3. In March 2007, the Commission issued Order No. 693, evaluating 107 Reliability Standards, including the Disturbance Control Performance (BAL–002–0) Reliability Standard.[5] In Order No. 693, the Commission approved BAL–002–0. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed the ERO to develop a modification to BAL–002–0 through the Reliability Standards development process that: (1) Includes a Requirement that explicitly provides that Demand Side Management may be used as a resource for contingency reserves; (2) develops a continent-wide contingency reserve policy; and (3) refers to the ERO rather than the NERC Operating Committee in Requirements R4.2 and R6.2.[6] On January 10, 2011, the Commission approved BAL–002–1 via letter order,[7] which addressed the third directive described above.

4. NERC's Rules of Procedure provide that all persons ''directly and materially affected'' by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[8] In response, the ERO will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules of Procedure provide that, within 45 days, the team will draft an interpretation of the Reliability Standard and submit it to the ballot pool. If approved by the ballot pool and subsequently by the NERC Board of Trustees (Board), the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authorities for approval.

5. Further, NERC's Rules of Procedure state that ''[a] valid interpretation response provides additional clarity about one or more Requirements, but does not expand on any Requirement and does not explain how to comply with any Requirement.'' [9]

B. Reliability Standard BAL–002–1

6. The stated purpose of BAL–002–1 is to ''ensure the Balancing Authority is able to utilize its Contingency Reserve to balance resources and demand and return Interconnection frequency within defined limits following a Reportable Disturbance.'' The *NERC Glossary of Terms Used in Reliability Standards* (Glossary) defines Reportable Disturbance as ''[A]ny event that causes an ACE change greater than or equal to 80% of a Balancing Authority's or Reserve Sharing Group's most severe contingency.'' [10]

7. Reliability Standard BAL–002–1 has six Requirements. Most relevant to the proposed interpretation, Requirements R3 and R4 provide:

R3. Each Balancing Authority or Reserve Sharing Group shall activate sufficient Contingency Reserve to comply with the DCS.

R3.1. As a minimum, the Balancing Authority or Reserve Sharing Group shall carry at least enough Contingency Reserve to cover the most severe single contingency. All Balancing Authorities and Reserve Sharing Groups shall review, no less frequently than annually, their probable contingencies to determine their prospective most severe single contingencies.

R4. A Balancing Authority or Reserve Sharing Group shall meet the Disturbance Recovery Criterion within the Disturbance Recovery Period for 100% of Reportable Disturbances. The Disturbance Recovery Criterion is:

R4.1. A Balancing Authority shall return its ACE to zero if its ACE just prior to the Reportable Disturbance was positive or equal to zero. For negative initial ACE values just prior to the Disturbance, the Balancing Authority shall return ACE to its pre-Disturbance value.

R4.2. The default Disturbance Recovery Period is 15 minutes after the start of a Reportable Disturbance.

Also relevant to the proceeding is the Additional Compliance Information language in Part D of BAL–002–1, which includes:

Reportable Disturbances—Reportable Disturbances are contingencies that are greater than or equal to 80% of the most severe single Contingency . . .

Simultaneous Contingencies—Multiple Contingencies occurring within one minute or less of each other shall be treated as a single Contingency. If the combined magnitude of the multiple Contingencies exceeds the most severe single Contingency, the loss shall be reported, but excluded from compliance evaluation.

II. NERC's Proposed Interpretation of BAL–002–1 (R4 and R5)

8. On February 12, 2013, NERC filed a petition (Petition) seeking approval of the proposed interpretation of BAL–002–1, developed in response to an interpretation request submitted on September 2, 2009 by the Northwest Power Pool Reserve Sharing Group (NWPP). NERC explains that NWPP requested clarification on the following matters:

(1) although a Disturbance that exceeds the most severe single Contingency must be reported by the Balancing Authority or Reserve Sharing Group (as applicable), is the Disturbance excluded from compliance evaluation for the applicable Balancing Authority or Reserve Sharing Group;

(2) with respect to either simultaneous Contingencies or non-simultaneous multiple Contingencies affecting a Reserve Sharing Group, the exclusion from compliance evaluation for Disturbances exceeding the most severe single Contingency applies both when

(a) all Contingencies occur within a single Balancing Authority member of the Reserve Sharing Group, and

(b) different Balancing Authorities within the Reserve Sharing Group experience separate Contingencies that occur simultaneously, or non-simultaneously but before the end of the Disturbance Recovery Period following the first Reportable Disturbance; and

(3) the meaning of the phrase ''excluded from compliance evaluation'' as used in Section 1.4 (''Additional Compliance Information'') of Part D of BAL–002–0 and for purposes of the preceding statements is that, with respect to Disturbances that exceed the most severe single Contingency for a Balancing Authority or Reserve Sharing Group (as applicable), a violation of BAL–002–0 does not occur even if ACE is not recovered within the Disturbance Recovery Period (15 minutes unless adjusted pursuant to BAL–002–0, R4.2).[11]

9. A proposed interpretation was first balloted in February 2010, but failed to achieve a two-third approval from the ballot body.[12] NERC staff determined

[1] 16 U.S.C. 824o(d)(2).

[2] *Id.* 824o(e)(3).

[3] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[4] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc. v. FERC,* 564 F.3d 1342 (DC Cir. 2009).

[5] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 316, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[6] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 356.

[7] *North American Electric Reliability Corp.,* 134 FERC ¶ 61,015 (2011).

[8] NERC Rules of Procedure, Appendix 3A, Standard Processes Manual, at 27–29. *See North American Electric Reliability Corp.,* 132 FERC ¶ 61,200 (2010) (approving revisions to Standards Process Manual). On February 28, 2013, in pending Docket No. RR13–2–000, NERC submitted proposed revisions to the Standards Process Manual.

[9] *Id.* at 27.

[10] NERC Glossary at 56. NERC defines Area Control Error or ''ACE'' as ''the instantaneous difference between net actual and scheduled interchange, taking into account the effects of Frequency Bias including correction for meter error.'' *Id.* at 5.

[11] NERC Petition at 7.

[12] NERC Petition, Exh. C (Summary of the Interpretation Development Proceedings and Record of Development of Proposed Interpretation) at 1–2.

that any further interpretation could not be developed unless the team could consider the measures and the additional compliance elements of the standard.[13] In January 2012 NERC staff told the NWPP their interpretation request was ''ineligible'' under the existing rules for developing interpretations.[14]

10. ISO/RTO Council appealed this decision, challenging the BAL–002–1 interpretation process. In a March 2012 letter responding to ISO/RTO Council, NERC staff stated: ''Given the difficulty in interpreting the existing language of the standard, NERC recommends to the [ISO/RTO Council] and NWPP that they consider developing and submitting a Standard Authorization Request (SAR) to the Standards Committee to address their concern.'' [15]

11. At its May 2012 meeting, the NERC Board Standards Oversight and Technology Committee (SOTC) concluded that ''strict construction for the purposes of interpretation was never meant to limit the materials considered in developing the interpretation solely to the contents of the requirements in a standard, but can include any language in the standard, including compliance related sections.'' [16] The NERC Standards Committee assembled another drafting team that developed a proposed interpretation that received a 90.34 percent approval vote in October 2012. On November 7, 2012, the NERC BOT adopted the proposed interpretation of BAL–002–1.

12. In its Petition, NERC states that, in response to NWPP's first question, the proposed interpretation clarifies that Balancing Authorities and Reserve Sharing Groups are not subject to the 15-minute Disturbance Recovery Period for Disturbances that exceed the MSSC.

13. With regard to the second question, NERC explained that the proposed interpretation provides that:

> [t]he standard was written to provide pre-acknowledged RSG's the same considerations as a single BA for purposes of exclusions from DCS compliance evaluation . . . [T]his applies to both multiple contingencies occurring within one minute or less of each other being treated as a single Contingency or Contingencies that occur after one minute of the start of a Reportable Disturbance but before the end of the Disturbance Recovery Period.
>
> The standard, while recognizing dynamically allocated RSGs, does NOT provide the members of dynamically allocated RSGs exclusions from DCS compliance evaluation on an RSG basis. For members of dynamically allocated RSGs, the exclusions are provided only on a member BA by member BA basis.[17]

14. In response to NWPP's third question regarding the exclusion language in the Additional Compliance Information provision of the standard, the drafting team responded:

> The Additional Compliance Information section clearly states: ''Simultaneous contingencies—Multiple contingencies occurring within one minute or less of each other shall be treated as a single Contingency. If the combined magnitude of the multiple Contingencies exceeds the Most Severe Single Contingency, the loss shall be reported, but excluded from compliance evaluation.''
>
> Although Requirement R3 does mandate that a BA or RSG activate sufficient Contingency Reserves to comply with DCS for every Reportable Disturbance, there is no requirement to comply with or even report disturbances that are below the Reportable Disturbance level. The averaging obligation does incent calculation and reporting of such lesser events. If a Balancing Authority were to experience a Disturbance five times greater than its most severe single Contingency, it would be required to report this Disturbance, but would not be required to recover ACE within 15 minutes following a Disturbance of this magnitude.
>
> An excludable disturbance is a disturbance whose magnitude was greater than the magnitude of the most severe single contingency. Any other proposed interpretation would result in treating BAL–002–0 as if it required Balancing Authorities and Reserve Sharing Groups to recover ACE (to zero or pre-Disturbance levels, as applicable) within the 15-minute Disturbance Recovery Period without regard to Disturbance magnitude. This is inconsistent with (a) the reserve requirement specified in R3.1 of BAL–002–0, (b) the text of Section 1.4 of Part D of BAL–002–0, and (c) the documented history of the development of BAL–002–0 . . .[18]

15. NERC contends that BAL–002–1 is intended to be read as ''an integrated whole'' and therefore uses the phrase ''excluded from compliance evaluation'' that appears in Part D, Section 1.5 (''Additional Compliance Information'') as support for concluding that the 15-minute Disturbance Recovery Period contained in Requirement R4 of BAL–002–1 does not apply to Disturbances that exceed the MSSC.[19]

16. NERC asserts that ''the proposed interpretation is necessary to prevent Registered Entities from shedding load to avoid possible violations of BAL–002, a result that is inconsistent with reliability principles.'' [20] NERC further asserts that ''[i]f the Reliability Standard is interpreted to require that ACE be returned to zero even for a Disturbance that exceeds the most severe single Contingency, a Balancing Authority could be required to take drastic operational actions, even when other measures of system reliability (voltage stability, normal frequency, operation within system operating limits, etc.) indicate otherwise.'' NERC adds that ''a lack of clarity on the interpretation of [BAL–002] potentially has significant financial and operational impacts on all Balancing Authorities and Reserve Sharing Groups.'' [21]

17. NERC asserts that the proposed interpretation ''neither expands on any Requirement nor explains how to comply with a Requirement.'' [22] NERC acknowledges that the proposed interpretation differs from the PacifiCorp Stipulation and Consent Agreement, in which NERC staff and Commission staff determined that PacifiCorp violated BAL–002–0 Requirement R4 by failing to restore its ACE within the 15-minute Disturbance Recovery Period, despite a Disturbance exceeding PacifiCorp's MSSC.[23]

III. Discussion

18. We propose to remand NERC's interpretation of BAL–002–1 because it fails to comport with the Commission-approved requirement that interpretations can only clarify, not change, a Reliability Standard.[24] Rather, changes to a Reliability Standard must be developed through NERC's standards development procedure as prescribed in NERC's Rules of Procedure.[25] As discussed below, NERC's proposed interpretation changes Requirement R4 of BAL–002–1 from its plain meaning, and also effectively redefines the term Reportable Disturbance as defined in the NERC Glossary and used in BAL–002–1.

19. NERC's proposal interprets the phrase ''excluded from compliance

[13] *Id.* at 2. A November 2009 Resolution of the NERC Board that pertained to interpretations included the following passage: ''[i]n deciding whether or not to approve a proposed interpretation, the board will use a standard of strict construction and not seek to expand the reach of the standard to correct a perceived gap or deficiency in the standard.''

[14] NERC Petition, Exh. C at 3.

[15] NERC Petition, Exh. C at 3.

[16] *Id.*

[17] *Id.* at 14–15

[18] NERC Petition at 16.

[19] NERC Petition at 10–11.

[20] *Id. at 3.*

[21] *Id.* at 12.

[22] Petition at 11 (citing NERC Standards Process Manual at 27).

[23] NERC Petition at 16–17 (citing *PacifiCorp,* 137 FERC ¶ 61,176, at n.5 (2011) (*PacifiCorp*)).

[24] NERC Standard Process Manual at 27 (''[a] valid interpretation response provides additional clarity about one or more Requirements, but does not expand on any Requirement . . .). The Commission approved the NERC Standards Process Manual in *North American Electric Reliability Corp.,* 132 FERC ¶ 61,200.

[25] NERC Standard Process Manual at 12–14 (explaining the Standards Authorization Request process).

evaluation,'' the exclusion language in Part D (Additional Compliance Information), Section 1.5 of BAL–002–1 as limiting the obligation to restore ACE set forth in Requirement R4 of BAL–002–1. As a result, while Requirement R4 of BAL–002–1 provides that a Balancing Authority or Reserve Sharing Group ''shall meet the Disturbance Recovery Criterion within the Disturbance Recovery Period [i.e., 15 minutes] for 100 percent of Reportable Disturbances,'' the NERC interpretation limits Requirement R4 as applicable to only *some* Reportable Disturbances.

20. Stated differently, while the term ''Reportable Disturbance'' is defined by NERC as ''contingencies that are greater than or equal to 80% of the most severe single contingency,'' the NERC interpretation changes the term to mean contingencies that are greater than or equal to 80 percent of the most severe single contingency but no greater than 100 percent of the most severe single contingency.[26] In sum, the proposed interpretation would relieve a Balancing Authority or Reserve Sharing Group from having to restore ACE within 15 minutes of Disturbances that are greater than 100 percent of the most single severe Contingency, notwithstanding that BAL–002–1 Requirement R4 requires that: ''[A] Balancing Authority or Reserve Sharing Group shall meet the Disturbance Recovery Criterion within the Disturbance Recovery Period for 100% of Reportable Disturbances.'' Thus, NERC's proposal goes beyond interpreting and, instead, changes a requirement of the Reliability Standard.

21. As mentioned above, NERC's proposed interpretation focuses on the following provision in Part D, Section 1.5 (''Additional Compliance Information'') of BAL–002–1:

> Simultaneous Contingencies—Multiple Contingencies occurring within one minute or less of each other shall be treated as a single Contingency. If the combined magnitude of the multiple Contingencies exceeds the most severe single Contingency, the loss shall be reported, but excluded from compliance evaluation.

NERC's proposal, however, is not adequately supported. NERC interprets the exclusion language in the Additional Compliance Information section as relieving Balancing Authorities or Reserve Sharing Groups from having to comply with the ACE restoration obligation in Requirement R4 for certain Disturbances. However, this understanding is not supported by Requirement R4 or the Additional Compliance Information section. Furthermore, NERC does not explain how the proposed interpretation naturally flows from the existing provision.

22. A more natural reading of the standard is that the exclusion language in the Additional Compliance Information section applies to the Levels of Non-Compliance section contained in BAL–002–1, Part D, Section 2, which provides that:

> Each Balancing Authority or Reserve Sharing Group not meeting the DCS during a calendar quarter shall increase its Contingency Reserve obligation for the calendar quarter…following the evaluation by the NERC or Compliance Monitor… The increase shall be directly proportional to the non-compliance with the DCS in the preceding quarter. This adjustment … is an additional percentage of reserve needed beyond the most severe single Contingency.''

This language indicates that each Balancing Authority or Reserve Sharing Group is subject to a *compliance evaluation* conducted by ''the NERC or Compliance Monitor'' to determine whether it has complied with the Disturbance Control Standard (DCS) and, if the Balancing Authority or Reserve Sharing Group has not complied, make a temporary upward adjustment to its Contingency Reserve. The exclusion language in the Additional Compliance Information section provides that, for multiple contingency Disturbances, the Balancing Authority or Reserve Sharing Group must report the event, but may exclude it from the evaluation of whether an upward adjustment in Contingency Reserves is warranted. NERC does not explain why the exclusion language in the Additional Compliance Information section applies to the ACE restoration obligation in Requirement R4 rather than the reserve obligation review process described in the Levels of Non-Compliance section of BAL–002–1. Thus, while NERC advocates reading the Reliability Standard as ''an integrated whole,''[27] NERC's interpretation fails to address other relevant language in BAL–002–1.

23. Accordingly, we propose to remand NERC's proposed interpretation as an impermissible change to BAL–002–1 outside the formal standards development process.[28] The Petition goes beyond a clarification by redefining key terms that would change the plain language of a requirement. The Commission seeks comments on its proposal.

IV. Information Collection Statement

24. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[29] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[30]

25. As stated above, the Commission previously approved, in letter order RD10–15, the Reliability Standard that is the subject of the current rulemaking. This proposed rulemaking proposes to remand the Interpretation of BAL–002–1. Accordingly, the proposed Commission action would not affect the information reporting burden.

V. Environmental Analysis

26. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[31] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[32] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Regulatory Flexibility Act Analysis

27. The Regulatory Flexibility Act of 1980 (RFA)[33] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic

[26] Reliability Standard BAL–002–1, Section D. Compliance, 1.5 (Additional Compliance Information) defines ''Reportable Disturbance'' as ''contingencies that are greater than or equal to 80% of the most severe single contingency.'' The definition of ''Reportable Disturbance'' in the NERC Glossary is ''[A]ny event that causes an ACE change greater than or equal to 80% of a Balancing Authority's or reserve sharing group's most severe contingency.'' NERC's proposed interpretation is incompatible with both definitions.

[27] NERC Petition at 10.

[28] Our proposal is based on the current wording of BAL–002–1 and does not prejudge the merits of any formal proposal by NERC to replace to or change the wording of BAL–002–1. To the extent NERC and its stakeholders have concerns with the requirements of BAL–002–1, they may seek to address these concerns through the standards development process.

[29] 5 CFR 1320.11.

[30] 44 U.S.C. 3507(d).

[31] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[32] 18 CFR 380.4(a)(2)(ii).

[33] 5 U.S.C. 601–612.

impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.[34] For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The Commission does not expect the proposed remand discussed herein to materially change the cost for small entities to comply with BAL–002–1. Therefore, the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

28. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due July 8, 2013. Comments must refer to Docket No. RM13–6–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

29. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

30. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

31. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

32. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

33. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

34. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–12131 Filed 5–21–13; 8:45 am]

BILLING CODE 6717–01–P

[34] *See* 13 CFR 121.201.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2011–0081]

RIN 0960–AG28

Revised Listings for Growth Disorders and Weight Loss in Children

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Several body systems in our Listing of Impairments (listings) contain listings for children based on impairment of linear growth or weight loss. We propose to replace those listings with new listings, add a listing to the genitourinary body system for children, and provide new introductory text for each listing explaining how to apply the new criteria. The proposed revisions to our listings reflect our program experience, advances in medical knowledge, comments we received from medical experts and the public at an outreach policy conference, and comments we received in response to a notice of intent to issue regulations and request for comments (request for comments) and an advance notice of proposed rulemaking (ANPRM). We are also proposing conforming changes in our regulations for title XVI of the Social Security Act (Act).

DATES: To ensure that your comments are considered, we must receive them by no later than July 22, 2013.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2011–0081 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2011–0081. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

What revisions are we proposing?

We propose to:

• Comprehensively revise 100.00, the Growth Impairment body system for children. We would apply the new listings in the body system only to infants who were born with low birth weight and to children who have not attained age 3 who fail to grow at the expected rate and have developmental delay (failure to thrive or FTT) as a listing level condition. We would no longer have impairment listings for linear growth alone.

• Revise listing 105.08 in the Digestive System. We would replace references to measurements on the latest versions of the Centers for Disease Control and Prevention's (CDC) growth charts with weight-for-length growth tables that we currently use for children from birth to attainment of age 2, and the body mass index (BMI)-for-age growth tables that we currently use for children age 2 to attainment of age 18. We would also provide more detailed listing criteria and guidance for applying the revised listing.

• Revise listings in the respiratory, cardiovascular, and immune systems that refer to the CDC's or other growth charts to incorporate the tables and other criteria we are proposing for listing 105.08. We would also refer to the tables in proposed listing 105.08 in one of the listings we are proposing for growth failure in children. In addition, we propose to add a listing in the Genitourinary Impairments body system similar to the listings in the other body systems.

• Revise the introductory text and listings to use the term ''growth failure'' for the body systems with growth listings. Our program experience shows that we are more likely to see the term ''growth failure'' in medical evidence than other terms now in our listings. The term ''growth failure'' includes impairment of linear and weight growth.

Why are we proposing these revisions?

We propose these revisions to reflect medical advances and our program experience. We last published final rules making comprehensive revisions to the growth section for children (people under age 18), section 100.00, on December 6, 1985.[1] We last published final rules revising 105.08 in the digestive system on October 19, 2007.[2] In the preamble to those rules, we indicated that we would periodically review and update the listings in light of our program experience and medical advances. Since that time, however, we have only extended the effective date of the rules.[3]

How did we develop these proposed revisions?

In developing these proposed revisions, we considered public comments received in response to the request for comments and the ANPRM we published in the **Federal Register** on June 14, 2000 and September 8, 2005.[4] In the request for comments and ANPRM, we announced our plans to update and revise the growth impairment listings, and we invited interested parties to send us written comments and suggestions.[5] On November 18, 2005, we hosted a policy outreach conference on ''Growth Disorders in the Disability Programs'' in Atlanta, Georgia.[6] From August 25 through 26, 2005, we hosted a policy outreach conference on ''Respiratory Disorders in the Disability Programs'' in Chicago, Illinois.[7] We also considered the Institute of Medicine consensus report, *HIV and Disability: Updating the Social Security Listings,* in setting CD4 values in combination with growth failure in children.[8]

We also considered information from a variety of sources, including:

• Individual medical experts in the field of growth and development, experts in related fields, representatives from advocacy groups for people with growth and developmental disorders, and people with growth and developmental disorders;

• People who make and review disability determinations and decisions for us in State agencies, in our Office of Quality Performance, and in our Office of Disability Adjudication and Review; and

• The published sources we list in the References section at the end of this preamble.

What revisions are we proposing and why are we proposing them?

Current section 100.00, Growth Impairment

We propose to change the name of this section to ''Low Birth Weight and Failure to Thrive'' to reflect the proposed changes to the listings. We also propose to revise the introductory text to reflect that we no longer use linear growth alone in the proposed listings. The proposed introductory text explains the conditions we evaluate in this section and provides guidance on how to apply the proposed listings.

Additionally, we propose to explain in section 100.00C.2.d that under listing 100.05A for growth failure, any measurements taken before the child attains age 2 can be used to evaluate the impairment under the appropriate listing for the child's age. These measurements must be taken within a 12-month period and be at least 60 days apart. A child who attains age 3 could no longer be evaluated under these listings. However, the measurements could be used to evaluate the child's impairment under the most affected body system.

Current Listings 100.02 and 100.03, Growth Impairment

We propose to delete these listings because they are based on linear (height) growth alone. Our adjudicative experience has shown that a declining linear growth rate is not always indicative of a disabling condition and that short stature in itself is not disabling.

Proposed Listing 100.04, Low Birth Weight in Infants From Birth To Attainment of Age 1

We currently find low birth weight (LBW) infants disabled until the attainment of age 1 under examples 6 and 7 in our functional equivalence rule.[9] We believe that it is simpler to provide a listing for these children. In example 6, we currently find infants from birth to the attainment of age 1 whose birth weight satisfy the objective criteria to be disabled. In example 7, we currently find children whose birth

[1] 50 FR 50068.

[2] 72 FR 59398.

[3] We published technical revisions to the listings on April 24, 2002. 67 FR 20018. These revisions included changes to the growth impairment and digestive system listings for children, but the revisions were not comprehensive. We extended the expiration date of the current listings for several body systems, including the growth impairment and digestive system listings, in final rules published on June 13, 2012. 77 FR 35264. The final rules extended the date on which the current growth impairment listings will no longer be effective to July 1, 2014 and the date on which the current digestive system listings will no longer be effective to April 1, 2014. 77 FR 35265.

[4] June 14, 2000 (65 FR 37321) and September 8, 2005 (70 FR 53323).

[5] Although we indicated that we would not summarize or respond to the comments, we read and considered them carefully. You can read the September 8, 2005 ANPRM and the comments we received in response to the ANPRM at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2006–0181. You can read the June 14, 2000 request for comments at *https://federalregister.gov/a/00-14841.*

[6] You can read a transcript of the policy conference at *http://www.regulations.gov.* Use the *Search* function to find document ID number SSA–2006–0181–0002.

[7] You can read the transcript of the policy conference at *http://www.regulations.gov.* Use the *Search* function to find document ID number SSA–2006–0149–0002.

[8] Institute of Medicine. (2010). *HIV and disability: Updating the Social Security Listings.* Washington, DC: The National Academies Press.

[9] See § 416.926a(m)(6) and (m)(7).

weight and gestational age satisfy the objective criteria to be disabled.

We also propose to provide a table of gestational ages and birth weights that will help adjudicators determine when an infant's birth weight, in combination with his or her gestational age, meets the criteria for LBW under the proposed listing.

We would explain in proposed 100.00B that, for impairments that meet the requirements in proposed listing 100.04A or 100.04B, we would follow the guidance in our regulations for considering LBW claims for medical reviews.[10]

Proposed Listing 100.05, Failure To Thrive in Children From Birth To Attainment Of Age 3

We currently provide guidance in our operating instructions for adjudicators to evaluate failure to thrive (FTT) in children from birth to attainment of age 2 under 105.08, the listing for malnutrition due to a digestive disorder.[11] If the child does not have a digestive disorder, we determine whether the child's growth disorder medically equals the digestive listing. This determination can be especially difficult when there are no identifiable or distinctive physical findings related to the child's FTT that an adjudicator could compare to the nutritional deficiency findings required in 105.08A. We are proposing listing 100.05 in which we would evaluate FTT in children from birth to attainment of age 3 regardless of whether there is a known cause for the child's growth failure.

Under our program rules, FTT can be a medically determinable impairment because it results from anatomical, physiological, or psychological abnormalities shown by medically acceptable clinical and laboratory diagnostic techniques. There is, however, no single definition or description of FTT. Medical sources reference various growth charts and growth percentiles for establishing FTT. Some medical sources establish a diagnosis of FTT based on the child's growth failure and various degrees of developmental delay. Others establish FTT based on growth failure alone. In proposed 100.05, we would require documentation of both growth failure and developmental delay to establish FTT as a listing-level condition because our program experience has shown that growth failure alone is not disabling.

In proposed 100.05A, we would evaluate growth failure by using the appropriate table(s) under proposed 105.08B in the digestive system to determine whether a child's growth is less than the third percentile. We would require three weight-for-length measurements for children from birth to attainment of age 2 or three body mass index (BMI)-for-age measurements for children age 2 to attainment of age 3 that are within a consecutive 12-month period and at least 60 days apart. If a child attains age 2 during the adjudication period, measurements taken before the child attains age 2 can be used to evaluate the impairment under the appropriate listing for the child's age, if the measurements were obtained within a 12-month period and are at least 60 days apart. We believe this number and interval of measurements over a consecutive 12-month period would establish that an infant's or a toddler's rate of growth reflects actual growth failure and not a short-term delay in rate of growth. This guidance on growth measurements apply to all affected body systems. The child does not have to have a digestive disorder for the purposes of proposed 100.05.

In proposed 100.05B, we would require a report from an acceptable medical source that establishes the appropriate level of delay in a child's development. Acceptable medical sources or early intervention specialists, physical or occupational therapists, and other sources may conduct standardized developmental assessments and developmental screenings.[12] The results of these tests and screenings must include a statement or records from an acceptable medical source indicating the child has a developmental delay. We would document the severity of the developmental delay with test results from a standardized developmental assessment that compares a child's level of development to the level typically expected for his or her chronological age. The required level of severity would be met if the test results indicate that the child's development is not more than two-thirds of the level typically expected for the child's age or results in a valid score that is at least two standard deviations below the mean.

In proposed 100.05C, we would require developmental delay established by an acceptable medical source and documented by findings from two narrative developmental reports dated at least 120 days apart that indicate development not more than two-thirds of the level typically expected for a child's age. We would require the narrative report to include the child's developmental history, physical examination findings, and an overall assessment of the child's development (that is, more than one or two isolated skills) by the acceptable medical source. Abnormal findings noted on repeated examinations, and information in narrative developmental reports, that may include the results of developmental screening tests, can identify a child who is not developing or achieving skills within expected timeframes.

Our current operating instructions limit evaluation of FTT to children from birth to attainment of age 2. We would extend the age limit in the proposed listing because our adjudicative experience indicates that FTT may continue to attainment of age 3. Our adjudicative experience has been that, by age 3, most children who develop or continue to experience growth failure will have an identifiable cause for their growth failure, which we evaluate under the affected body system.

Proposed Listing 103.06, Growth Failure Due to Any Chronic Respiratory Disorder

We propose to add 103.06, under the respiratory body system, for evaluating growth failure in children with chronic respiratory disorders because growth failure is a common complication of chronic respiratory disorders in children. We would add the same growth failure criteria as proposed in 105.08B. We would also provide guidance in the introductory text to adjudicators on how to evaluate growth failure under the proposed listing.

Proposed Listing 104.02C

We propose to revise 104.02C, under the cardiovascular body system, to conform to criteria we are proposing to growth listings in other body systems. We also propose to change the current title of the listing from *Growth disturbance with* to *Growth failure as required in 1 or 2.* We would add the same growth failure criteria as proposed in 105.08B. We would also provide guidance in the introductory text on how to evaluate growth failure under the proposed listing.

Proposed Listing 105.08, Growth Failure Due to Any Digestive Disorder

We propose to revise the title of listing 105.08, under the digestive body system, to change *Malnutrition due to any digestive disorder* to *Growth failure due to any digestive disorder.* We would provide guidance in the introductory text on how to evaluate growth failure under the proposed listing.

[10] See § 416.990(b)(11).

[11] POMS DI 24550.001 at *https://secure.ssa.gov/poms.nsf/lnx/0424550001.*

[12] See, §§ 404.1513(a) and 416.913(a).

We propose to revise the current criteria in 105.08A. We would require two laboratory values at least 60 days apart within a consecutive 12-month period instead of a consecutive 6-month period to be consistent with pediatric standards of care for evaluating growth over time. We would remove the phrase ''despite continuing treatment as prescribed'' because we address the issue of following prescribed treatment elsewhere in our rules.[13] We would also remove current 105.08A3 because the criterion is no longer a good indicator of nutritional deficiency. As a result of advances in medical therapy, the vitamin or mineral deficiencies referred to in the current listing can be supplemented in the diet.

We would change the title of 105.08B from *Growth retardation documented by one of the following* to *Growth failure as required in 1 or 2.* We would also require at least 60 days between the growth measurements to be consistent with similar rules in other body systems.

In proposed 105.08B, we would add the weight-for-length growth tables that we currently use for children from birth to attainment of age 2, and the body mass index (BMI)-for-age growth tables that we use for children age 2 to attainment of age 18, both of which are in our current operating instructions for determining growth failure.[14] We would no longer refer adjudicators to the Centers for Disease Control and Prevention's (CDC's) latest recommended growth charts. In making this proposed change, we considered the CDC's recently published revised growth charts for children that adopt the World Health Organization (WHO) standards for monitoring growth in children birth to age 2.[15] There are several reasons why we did not adopt these growth charts for purposes of evaluating growth under our listings. The WHO's growth charts use a 2.3 percentile standard to represent two standard deviations below the mean and describe the growth of healthy children in optimal conditions. However, we currently evaluate growth failure based on growth measurements that are less than the 3.0 or third percentile of the tables in our current operating instructions to represent two standard deviations below the mean. Additionally, the 3.0 or third percentile based on the WHO's growth charts would identify fewer children than our current third percentile tables, which we base on CDC's growth charts prior to their adoption of the WHO recommended growth standards.

The third percentile BMI-for-age tables we propose to add to listing 105.08B for children age 2 to attainment of age 18 are based on CDC's current BMI-for-age growth charts. We propose adding the third percentile tables in 105.08B instead of growth charts because, in our adjudicative experience, we have found that plotted growth charts are not always included in a child's medical records whereas weight and length or weight measurements are. It is also simpler for our adjudicators to apply the measurements to the third percentile tables rather than plotting measurements themselves on a growth chart. Using weight-for-length measurements also means that adjudicators do not need to adjust for prematurity.

We believe that it remains programmatically correct for us to continue to determine growth failure for children from birth to attainment of age 18 using the tables currently in our operating instructions. We believe that children who have growth measurements that are less than the third percentile, and have another impairment with marked limitations as described in each of the proposed listings containing growth criteria, are disabled.

Proposed Listing 106.08, Growth Failure Due to Any Chronic Renal Disease

We propose to add 106.08, under the genitourinary body system, for evaluating growth failure in children with chronic renal disease because growth failure is a common complication of chronic renal disease in children. The kidneys regulate the amounts and interactions of nutrients, including proteins, minerals, and vitamins, necessary for growth. Impaired kidney function and the side effects of treatment may decrease a child's appetite and further limit the utilization of these nutrients, resulting in growth failure. We would add the same growth failure criteria as proposed in 105.08B. We would also provide guidance in the introductory text on how to evaluate growth failure under the proposed listing.

Proposed Listing 114.08H, Immune Suppression and Growth Failure

We propose to revise 114.08H, under the immune body system, for children with growth failure due to HIV-induced immune suppression to conform to criteria we are proposing for growth listings in other body systems. We would remove the current weight-loss criteria and add laboratory criteria and the same growth failure criteria as proposed in 105.08B. We propose to quantify the degree of HIV-induced immune suppression by specifying CD4 laboratory criteria for different ages, following accepted medical standards of care. We would also provide guidance in the introductory text on how to evaluate growth failure under the proposed listing.

Other Changes

We also propose the following conforming changes:

- Revise § 416.924b(b) to reflect the removal of listings 100.002 and 100.03 and the addition of 100.04;
- Revise § 416.926a(m) by removing examples 6 and 7 for children with low birth weight because we are providing listings with these specific criteria; and
- Revise § 416.934 [16] by adding two presumptive disability categories for infants with low birth weight. This revision reflects our longstanding operational instructions for making findings of presumptive disability for such infants.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

Under the Act, we have full power and authority to make rules and regulations and to establish necessary and appropriate procedures to carry out such provisions. Sections 205(a), 702(a)(5), and 1631(d)(1).

How long would these proposed rules be effective?

If we publish these proposed rules as final rules, they will remain in effect for 5 years after the date they become effective unless we extend them or revise and issue them again.

Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these

[13] See § 416.930.

[14] POMS DI 24550.001 Weight-for-Length Table (Birth to the Attainment of Age 2) at *http://policynet.ba.ssa.gov/poms.nsf/lnx/0424550001.and* POMS DI 24550.002 Body-Mass-Index-for-Age Tables (Age 2 to the Attainment of Age 18) at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0424550002.*

[15] The CDC's Growth Charts at *http://www.cdc.gov/growthcharts/.*

[16] Section 416.934 provides a list of impairment categories that employees in our field offices may use to make findings of presumptive disability in SSI claims without obtaining any medical evidence. We may make SSI payments based on presumptive disability or presumptive blindness when there is a high probability that we will find a claimant disabled or blind when we make our formal disability determination at the initial level of our administrative review process. § 416.933.

proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rules.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These proposed rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

References

We consulted the following references when we developed these proposed rules:

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We will make these references available to you for inspection if you are interested in reading them. Please make arrangements with the contact person shown in this preamble if you would like to review any reference materials.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: May 9, 2013.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR part 404 subpart P and part 416 subpart I as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising item 1 of the introductory text before part A of appendix 1, and in part B of appendix 1 by:

■ a. Revising the body system name for section 100.00 in the table of contents,

■ b. Revising section 100.00,

■ c. Adding section 103.00F,

■ d. Adding listing 103.06,

■ e. Revising section 104.00C2b,

■ f. Revising section 104.00C2bii,

■ g. Adding section 104.00C3,

■ h. Revising listing 104.02C,

■ i. Revising section 105.00G,

■ j. Revising listing 105.08,

■ k. Adding section 106.00E5,

■ l. Adding listing 106.08,

■ m. Adding section 114.00F4, and

■ n. Revising listing 114.08H,

The revisions and additions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

1. Low Birth Weight and Failure To Thrive (100.00): [DATE 5 YEARS FROM THE EFFECTIVE DATE OF THE FINAL RULE].

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Part B

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100.00 Low Birth Weight and Failure To Thrive.

* * * * *

100.00 LOW BIRTH WEIGHT AND FAILURE TO THRIVE

A. *What conditions do we evaluate under these listings?* We evaluate low birth weight (LBW) in infants from birth to attainment of age 1 and failure to thrive (FTT) in infants and toddlers from birth to attainment of age 3.

B. *How do we evaluate disability based on LBW under 100.04?* In 100.04A and 100.04B, we use an infant's birth weight as documented by an original or certified copy of the infant's birth certificate or by a medical record signed by a physician. *Birth weight* means the first weight recorded after birth. In 100.04B, *gestational age* is the infant's age based on the date of conception as recorded in the medical record. If your impairment meets the requirements for listing 100.04A or 100.04B, we will follow the rules in § 416.990(b)(11) of this chapter.

C. *How do we evaluate disability based on FTT under 100.05?*

1. *General.* We establish FTT with or without a known cause when we have documentation of an infant's or a toddler's growth failure and developmental delay from an acceptable medical source(s) as defined in § 416.913(a) of this chapter. We require documentation of growth measurements in 100.05A and developmental delay described in 100.05B or 100.05C within the same consecutive 12-month period. The dates of developmental testing and reports may be different from the dates of growth measurements. After the attainment of age 3, we evaluate growth failure under the affected body system(s).

2. *Growth failure.* Under 100.05A, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile. The child does not need to have a digestive disorder for purposes of 100.05.

a. For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

b. For children age 2 to attainment of age 3, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

c. BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

d. *Growth measurements.* The weight-for-length measurements for children birth to the attainment of age 2 and body mass index (BMI)-for-age measurements for children age 2 to attainment of age 3 that are required for this listing must be obtained within a 12-month period and at least 60 days apart. If a child attains age 2 during the evaluation period additional measurements are not needed. Any measurements taken before the child attains age 2 can be used to evaluate the impairment under the appropriate listing for the child's age. If the child attains age 3 during the evaluation period, the measurements can be used to evaluate them in the most affected body system.

3. *Developmental delay.*

a. Under 100.05B and C, we use reports from acceptable medical sources to establish delay in a child's development.

b. Under 100.05B, we document the severity of developmental delay with results from a standardized developmental assessment, which compares a child's level of development to the level typically expected for his or her chronological age. If the child was born prematurely, we may use the corrected chronological age (CCA) for comparison. (See § 416.924b(b) of this chapter.) CCA is the chronological age adjusted by a period of gestational prematurity. CCA = (chronological age) − (number of weeks premature). Acceptable medical sources or early intervention specialists, physical or occupational therapist, and other sources may conduct standardized developmental assessments and developmental screenings. The results of these tests and screenings must be accompanied by a statement or records from an acceptable medical source who established the child has a developmental delay.

c. Under 100.05C, when there are no results from a standardized developmental assessment in the case record, we need narrative developmental reports from the child's medical sources in sufficient detail to assess the severity of his or her developmental delay. A narrative developmental report is based on clinical observations, progress notes, and well-baby check-ups. To meet the requirements for 100.05C, the report must include: the child's developmental history; examination findings (with abnormal findings noted on repeated examinations); and an overall assessment of the child's development (that is, more than one or two isolated skills) by the medical source. Some narrative developmental reports may include results from developmental screening tests, which can identify a child who is not developing or achieving skills within expected timeframes. Although medical sources may refer to screening test results as supporting evidence in the narrative developmental report, screening test results alone cannot establish a diagnosis or the severity of developmental delay.

D. *How do we evaluate disorders that do not meet one of these listings?*

1. We may find infants disabled due to other disorders when their birth weights are greater than 1200 grams but less than 2000 grams and their weight and gestational age do not meet 100.04. The most common disorders of prematurity and LBW include retinopathy of prematurity (ROP), chronic lung disease of infancy (CLD, previously known as bronchopulmonary dysplasia, or BPD), intraventricular hemorrhage (IVH), necrotizing enterocolitis (NEC), and periventricular leukomalacia (PVL). Other disorders include poor nutrition and growth failure, hearing disorders, seizure disorders, cerebral palsy, and developmental disorders. We evaluate these disorders under the affected body systems.

2. We may evaluate infants and toddlers with growth failure that is associated with a known medical disorder under the body system of that medical disorder, for example, the respiratory or digestive body systems.

3. If an infant or toddler has a severe medically determinable impairment(s) that does not meet the criteria of any listing, we must also consider whether the child has an impairment(s) that medically equals a listing (see § 416.926 of this chapter). If the child's impairment(s) does not meet or medically equal a listing, we will determine whether the child's impairment(s) functionally equals the listings (see § 416.926a of this chapter) considering the factors in § 416.924a of this chapter. We use the rules in section § 416.994a of this chapter when we decide whether a child continues to be disabled.

100.01 *Category of Impairments, Low Birth Weight and Failure To Thrive.*

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100.04 *Low birth weight in infants from birth to attainment of age 1.*

A. Birth weight (see 100.00B) of less than 1200 grams.

OR

B. The following gestational age and birth weight:

Gestational age (in weeks)	Birth weight
37–40	2000 grams or less.
36	1875 grams or less.
35	1700 grams or less.
34	1500 grams or less.
33	1325 grams or less.

100.05 *Failure to thrive in children from birth to attainment of age 3 (see 100.00C), documented by A and B, or A and C.*

A. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table in listing 105.08B1; or

2. *For children age 2 to attainment of age 3,* three body mass index (BMI)-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table in listing 105.08B2.

AND

B. Developmental delay (see 100.00C1 and C3), established by an acceptable medical source and documented by findings from one report of a standardized developmental assessment (see 100.00C3b) that:

1. Shows development not more than two-thirds of the level typically expected for the child's age; or

2. Results in a valid score that is at least two standard deviations below the mean.

OR

C. Developmental delay (see 100.00C3), established by an acceptable medical source and documented by findings from two narrative developmental reports (see 100.00C3c) that:

1. Are dated at least 120 days apart (see 100.00C1); and

2. Indicate development not more than two-thirds of the level typically expected for the child's age.

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103.00 RESPIRATORY SYSTEM

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F. *How do we evaluate growth failure due to any chronic respiratory disorder?*

1. To evaluate growth failure due to any chronic respiratory disorder, we require documentation of the oxygen supplementation described in 103.06A and the growth measurements in 103.06B within the same consecutive 12-month period. The dates of oxygen supplementation may be different from the dates of growth measurements.

2. Under 103.06B, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

a. For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

b. For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

c. BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

* * * * *

103.06 *Growth failure due to any chronic respiratory disorder (see 103.00F), documented by:*

A. Hypoxemia with the need for at least 1.0 L/min of oxygen supplementation for at least 4 hours per day and for at least 90 consecutive days.

AND

B. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

2. *For children age 2 to attainment of age 18,* three body mass index (BMI)-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

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104.00 CARDIOVASCULAR SYSTEM

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C. *Evaluating Chronic Heart Failure.*

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2. *What evidence of CHF do we need?*

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b. To establish that you have *chronic* heart failure, we require that your medical history and physical examination describe characteristic symptoms and signs of pulmonary or systemic congestion or of limited cardiac output associated with abnormal findings on appropriate medically acceptable imaging. When a remediable factor, such as arrhythmia, triggers an acute episode of heart failure, you may experience restored cardiac function, and a chronic impairment may not be present.

* * * * *

(ii) During infancy, other manifestations of chronic heart failure may include repeated lower respiratory tract infections.

* * * * *

3. *How do we evaluate growth failure due to CHF?*

a. To evaluate growth failure due to CHF, we require documentation of the clinical findings of CHF described in 104.00C2 and the growth measurements in 104.02C within the same consecutive 12-month period. The dates of clinical findings may be different from the dates of growth measurements.

b. Under 104.02C, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

(i) For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

(ii) For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

(iii) BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

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104.02 *Chronic heart failure* while on a regimen of prescribed treatment, with symptoms and signs described in 104.00C2 and with one of the following:

* * * * *

C. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

2. *For children age 2 to attainment of age 18,* three body mass index (BMI)-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

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105.00 DIGESTIVE SYSTEM

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G. *How do we evaluate growth failure due to any digestive disorder?*

1. To evaluate growth failure due to any digestive disorder, we require documentation of the laboratory findings of chronic nutritional deficiency described in 105.08A and the growth measurements in 105.08B within the same consecutive 12-month period. The dates of laboratory findings may be different from the dates of growth measurements.

2. Under 105.08B, we evaluate a child's growth failure by using the appropriate table for age and gender.

a. For children from birth to attainment of age 2, we use the weight-for-length table (see Table I or Table II).

b. For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table (see Tables III or IV).

c. BMI is the ratio of a child's weight to the square of the child's height. We calculate BMI using one of the following formulas:

English Formula

BMI = [Weight in Pounds/(Height in Inches × Height in Inches)] × 703

Metric Formulas

BMI = Weight in Kilograms/(Height in Meters × Height in Meters)

BMI = [Weight in Kilograms/(Height in Centimeters × Height in Centimeters)] × 10,000

* * * * *

105.08 *Growth failure due to any digestive disorder* (see 105.00G), documented by A and B:

A. Chronic nutritional deficiency present on at least two evaluations at least 60 days apart within a consecutive 12-month period documented by one of the following:

1. Anemia with hemoglobin less than 10.0 g/dL; or

2. Serum albumin of 3.0 g/dL or less;

AND

B. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on Table I or Table II; or

TABLE I—MALES BIRTH TO ATTAINMENT OF AGE 2 THIRD PERCENTILE VALUES FOR WEIGHT-FOR-LENGTH

Length (centimeters)	Weight (kilograms)	Length (centimeters)	Weight (kilograms)	Length (centimeters)	Weight (kilograms)
45.0	1.597	64.5	6.132	84.5	10.301
45.5	1.703	65.5	6.359	85.5	10.499
46.5	1.919	66.5	6.584	86.5	10.696
47.5	2.139	67.5	6.807	87.5	10.895
48.5	2.364	68.5	7.027	88.5	11.095
49.5	2.592	69.5	7.245	89.5	11.296
50.5	2.824	70.5	7.461	90.5	11.498
51.5	3.058	71.5	7.674	91.5	11.703
52.5	3.294	72.5	7.885	92.5	11.910
53.5	3.532	73.5	8.094	93.5	12.119
54.5	3.771	74.5	8.301	94.5	12.331
55.5	4.010	75.5	8.507	95.5	12.546
56.5	4.250	76.5	8.710	96.5	12.764
57.5	4.489	77.5	8.913	97.5	12.987
58.5	4.728	78.5	9.113	98.5	13.213
59.5	4.966	79.5	9.313	99.5	13.443
60.5	5.203	80.5	9.512	100.5	13.678
61.5	5.438	81.5	9.710	101.5	13.918
62.5	5.671	82.5	9.907	102.5	14.163
63.5	5.903	83.5	10.104	103.5	14.413

TABLE II—FEMALES BIRTH TO ATTAINMENT OF AGE 2 THIRD PERCENTILE VALUES FOR WEIGHT-FOR-LENGTH

Length (centimeters)	Weight (kilograms)	Length (centimeters)	Weight (kilograms)	Length (centimeters)	Weight (kilograms)
45.0	1.613	64.5	5.985	84.5	10.071
45.5	1.724	65.5	6.200	85.5	10.270
46.5	1.946	66.5	6.413	86.5	10.469
47.5	2.171	67.5	6.625	87.5	10.670
48.5	2.397	68.5	6.836	88.5	10.871
49.5	2.624	69.5	7.046	89.5	11.074
50.5	2.852	70.5	7.254	90.5	11.278
51.5	3.081	71.5	7.461	91.5	11.484
52.5	3.310	72.5	7.667	92.5	11.691
53.5	3.538	73.5	7.871	93.5	11.901
54.5	3.767	74.5	8.075	94.5	12.112
55.5	3.994	75.5	8.277	95.5	12.326
56.5	4.220	76.5	8.479	96.5	12.541
57.5	4.445	77.5	8.679	97.5	12.760
58.5	4.892	78.5	8.879	98.5	12.981
59.5	5.113	79.5	9.078	99.5	13.205
60.5	5.333	80.5	9.277	100.5	13.431
61.5	5.552	81.5	9.476	101.5	13.661
62.5	5.769	82.5	9.674	102.5	13.895
63.5	5.769	83.5	9.872	103.5	14.132

2. *For children age 2 to attainment of age 18,* three body mass index (BMI)-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on Table III or Table IV.

TABLE III—MALES AGE 2 TO ATTAINMENT OF AGE 18 THIRD PERCENTILE VALUES FOR BMI-FOR-AGE

Age (yrs. and mos.)	BMI	Age (yrs. and mos.)	BMI	Age (yrs. and mos.)	BMI
2.0 to 2.1	14.5	10.11 to 11.2	14.3	14.9 to 14.10	16.1
2.2 to 2.4	14.4	11.3 to 11.5	14.4	14.11 to 15.0	16.2
2.5 to 2.7	14.3	11.6 to 11.8	14.5	15.1 to 15.3	16.3
2.8 to 2.11	14.2	11.9 to 11.11	14.6	15.4 to 15.5	16.4
3.0 to 3.2	14.1	12.0 to 12.1	14.7	15.6 to 15.7	16.5
3.3 to 3.6	14.0	12.2 to 12.4	14.8	15.8 to 15.9	16.6
3.7 to 3.11	13.9	12.5 to 12.7	14.9	15.10 to 15.11	16.7
4.0 to 4.5	13.8	12.8 to 12.9	15.0	16.0 to 16.1	16.8
4.6 to 5.0	13.7	12.10 to 13.0	15.1	16.2 to 16.3	16.9
5.1 to 6.0	13.6	13.1 to 13.2	15.2	16.4 to 16.5	17.0
6.1 to 7.6	13.5	13.3 to 13.4	15.3	16.6 to 16.8	17.1
7.7 to 8.6	13.6	13.5 to 13.7	15.4	16.9 to 16.10	17.2
8.7 to 9.1	13.7	13.8 to 13.9	15.5	16.11 to 17.0	17.3
9.2 to 9.6	13.8	13.10 to 13.11	15.6	17.1 to 17.2	17.4
9.7 to 9.11	13.9	14.0 to 14.1	15.7	17.3 to 17.5	17.5
10.0 to 10.3	14.0	14.2 to 14.4	15.8	17.6 to 17.7	17.6
10.4 to 10.7	14.1	14.5 to 14.6	15.9	17.8 to 17.9	17.7
10.8 to 10.10	14.2	14.7 to 14.8	16.0	17.10 to 17.11	17.8

TABLE IV—FEMALES AGE 2 TO ATTAINMENT OF AGE 18 THIRD PERCENTILE VALUES FOR BMI-FOR-AGE

Age (yrs. and mos.)	BMI	Age (yrs. and mos.)	BMI	Age (yrs. and mos.)	BMI
2.0 to 2.2	14.1	10.8 to 10.10	14.0	14.3 to 14.5	15.6
2.3 to 2.6	14.0	10.11 to 11.2	14.1	14.6 to 14.7	15.7
2.7 to 2.10	13.9	11.3 to 11.5	14.2	14.8 to 14.9	15.8
2.11 to 3.2	13.8	11.6 to 11.7	14.3	14.10 to 15.0	15.9
3.3 to 3.6	13.7	11.8 to 11.10	14.4	15.1 to 15.2	16.0
3.7 to 3.11	13.6	11.11 to 12.1	14.5	15.3 to 15.5	16.1
4.0 to 4.4	13.5	12.2 to 12.4	14.6	15.6 to 15.7	16.2
4.5 to 4.11	13.4	12.5 to 12.6	14.7	15.8 to 15.10	16.3
5.0 to 5.9	13.3	12.7 to 12.9	14.8	15.11 to 16.0	16.4
5.10 to 7.6	13.2	12.10 to 12.11	14.9	16.1 to 16.3	16.5
7.7 to 8.4	13.3	13.0 to 13.2	15.0	16.4 to 16.6	16.6
8.5 to 8.10	13.4	13.3 to 13.4	15.1	16.7 to 16.9	16.7
8.11 to 9.3	13.5	13.5 to 13.7	15.2	16.10 to 17.0	16.8
9.4 to 9.8	13.6	13.8 to 13.9	15.3	17.1 to 17.3	16.9
9.9 to 10.0	13.7	13.10 to 14.0	15.4	17.4 to 17.7	17.0
10.1 to 10.4	13.8	14.1 to 14.2	15.5	17.8 to 17.11	17.1
10.5 to 10.7	13.9				

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106.00 GENITOURINARY IMPAIRMENTS

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E. *What other things do we consider when we evaluate your genitourinary impairment under specific listings?*

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5. *Growth failure due to any chronic renal disease (106.08).*

a. To evaluate growth failure due to any chronic renal disease, we require documentation of the laboratory findings described in 106.08A and the growth measurements in 106.08B within the same consecutive 12-month period. The dates of laboratory findings may be different from the dates of growth measurements.

b. Under 106.08B, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

(i) For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

(ii) For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

(iii) BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

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106.08 *Growth failure due to any chronic renal disease* (see 106.00E5), with:

A. Serum creatinine of 2 mg/dL or greater, documented at least two times within a consecutive 12-month period with at least 60 days between measurements.

AND

B. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

2. *For children age 2 to attainment of age 18,* three body mass index (BMI)-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

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114.00 IMMUNE SYSTEM DISORDERS

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F. *How do we document and evaluate human immunodeficiency virus (HIV) infection?* * * *

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4. *HIV infection manifestations specific to children.*

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d. *Growth failure due to HIV immune suppression.*

(i) To evaluate growth failure due to HIV immune suppression, we require documentation of the laboratory values described in 114.08H1 and the growth measurements in 114.08H2 or 114.08H3 within the same consecutive 12-month period. The dates of laboratory findings may be different from the dates of growth measurements.

(ii) Under 114.08H2 and 114.08H3, we use the appropriate table under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

A. For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

B. For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

C. BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

* * * * *

114.08 *Human immunodeficiency virus (HIV) infection.* * * *

* * * * *

H. *Immune suppression and growth failure* (see 114.00F4d) documented by 1 and 2, or by 1 and 3.

1. CD4 measurement:

a. *For children from birth to attainment of age 5,* CD4 percentage of less than 20 percent; or

b. *For children age 5 to attainment of age 18,* absolute CD4 count of less than 200 cells/mm^3, or CD4 percentage of less than 14 percent; and

2. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

3. *For children age 2 to attainment of age 18,* three body mass index (BMI)-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I — [Amended]

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 4. Amend § 416.924b by revising paragraph (b) to read as follows:

§ 416.924b Age as a factor of evaluation in the sequential evaluation process for children.

* * * * *

(b) *Correcting chronological age of premature infants.* We generally use chronological age (a child's age based on birth date) when we decide whether, or the extent to which, a physical or mental impairment or combination of impairments causes functional limitations. However, if you were born prematurely, we may consider you younger than your chronological age when we evaluate your development. We may use a ''corrected'' chronological age (CCA); that is, your chronological age adjusted by a period of gestational prematurity. We consider an infant born at less than 37 weeks' gestation to be born prematurely.

(1) We compute your CCA by subtracting the number of weeks of prematurity (the difference between 40 weeks of full-term gestation and the number of actual weeks of gestation) from your chronological age. For example, if your chronological age is 20 weeks but you were born at 32 weeks gestation (8 weeks premature), then your CCA is 12 weeks.

(2) We evaluate developmental delay in a premature child until the child's prematurity is no longer a relevant factor, generally no later than about chronological age 2.

(i) If you have not attained age 1 and were born prematurely, we will assess your development using your CCA.

(ii) If you are over age 1 and have a developmental delay, and prematurity is still a relevant factor, we will decide whether to correct your chronological age. We will base our decision on our judgment and all the facts in your case. If we decide to correct your chronological age, we may correct it by subtracting the full number of weeks of prematurity or a lesser number of weeks. If your developmental delay is the result of your medically determinable impairment(s) and is not attributable to your prematurity, we will decide not to correct your chronological age.

(3) Notwithstanding the provisions in paragraph (b)(1) of this section, we will not compute a CCA if the medical evidence shows that your treating source or other medical source has already taken your prematurity into consideration in his or her assessment of your development. We will not compute a CCA when we find you disabled under listing 100.04 of the Listing of Impairments.

§ 416.926a [Amended]

■ 5. Amend § 416.926a by removing paragraphs (m)(6) and (m)(7) and redesignating paragraph (m)(8) as (m)(6).

■ 6. Amend § 416.934 by adding paragraphs (j) and (k) to read as follows:

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

* * * * *

(j) Infants weighing less than 1200 grams at birth, until attainment of 1 year of age.

(k) Infants weighing at least 1200 but less than 2000 grams at birth, and who are small for gestational age, until attainment of 1 year of age. (Small for gestational age means a birth weight that is at or more than 2 standard deviations below the mean or that is less than the 3rd growth percentile for the gestational age of the infant.)

[FR Doc. 2013–11601 Filed 5–21–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 109

[Docket No. PHMSA–2012–0259 (HM–258B)]

RIN 2137–AE98

Hazardous Materials: Enhanced Enforcement Procedures—Resumption of Transportation

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to address certain matters identified in the Hazardous Materials Transportation Safety Act of 2012 related to the Department's enhanced inspection, investigation, and enforcement authority. Specifically, we are proposing to amend the opening of packages provision to include requirements for perishable hazardous material; add a new notification section; and add a new equipment section to the Department's procedural regulations. For the mandates to address certain matters related to the Department's enhanced inspection, investigation, and enforcement authority, we are proposing no additional regulatory changes. We believe that the Department's current

rules that were previously established through notice and comment rulemaking and existing policies and operating procedures thoroughly address the hazmat transportation matters identified by Congress. These inspection and enforcement procedures will not change the current inspection procedures for DOT, but will augment DOT's existing enforcement procedures and allow the Department to respond immediately and effectively to conditions or practices that pose serious threats to life, property, or the environment. As this rule affects only agency enforcement procedures, it therefore results in no additional burden of compliance costs to industry.

DATES: Comments must be received by July 22, 2013. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2012–0259 (HM–258B)) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Vincent Lopez or Shawn Wolsey, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, at (202) 366–4400.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

On July 6, 2012, the President signed the Moving Ahead for Progress in the 21st Century Act, or the MAP–21, which included the Hazardous Materials Transportation Safety Improvement Act of 2012 (HMTSIA) as Title III of the statute. Public Law 112–141, 126 Stat. 405, July 6, 2012. Section 33009 of HMTSIA revised 49 U.S.C. 5121 to include a notification requirement. Congress also directed the Department to address certain hazmat transportation matters through rulemaking:

- The safe and expeditious resumption of transportation of perishable hazardous material, including radiopharmaceuticals and other medical products that may require timely delivery due to life-threatening situations;
- The means by which non-compliant packages that present an imminent hazard are placed out-of-service until the condition is corrected;
- The means by which non-compliant packages that do not present a hazard are moved to their final destination;
- Appropriate training and equipment for inspectors; and
- The proper closure of packaging in accordance with the hazardous material regulations.

We are proposing in this rulemaking, as described further below, to clarify the Department's position with respect to perishable hazardous material, by amending the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, emergency orders, and emergency recalls. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives. We are also proposing to codify the statutory notification requirement in HMTSIA by incorporating into the regulations the Department's current notification procedures from the operations manual. Finally, we are proposing to add a new provision to address appropriate equipment for inspectors. For the remaining mandates to address certain matters related to the Department's enhanced inspection, investigation, and enforcement authority, we are proposing no additional regulatory changes. We believe that the Department's current rules that were previously established through notice and comment rulemaking and existing policies and operating procedures thoroughly address the hazmat transportation matters identified by Congress as requiring additional regulations. For instance, in a prior rulemaking, the Department established, in Part 109, procedural regulations for opening packages, removing packages from transportation, and closing packages. These regulations include the definition of key terms, including perishable hazardous material. The regulations address how the Department's agents will handle non-compliant packages that present an imminent hazard and those that do not. Moreover, the rules address when and how the Department's agents will open a package. And, if an agent opens a package, there are procedural rules for closing the package and ensuring its safe resumption of transportation, if applicable. In addition, the Department developed an internal operations manual for training and use by its hazmat inspectors and investigators across all modes of transportation. The operations manual's guidance is intended to target and manage the use of the enhanced inspection and enforcement authority in a uniform and consistent manner within the Department. At this time, we do not have any data or other information that indicate the rules, policies, and operating procedures currently in place are inadequate or that additional regulations are necessary.

II. Background

On March 2, 2011, we issued a final rule under Docket No. PHMSA–2005–22356 (PHM–7), ''Hazardous Materials: Enhanced Enforcement Procedures.'' 76 FR 11570. The final rule became effective on May 2, 2011. The rule implemented enhanced inspection, investigation, and enforcement authority conferred on the Secretary of Transportation (Secretary) by the

Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (HMTSSRA). The final rule established procedures for issuance of emergency orders (restrictions, prohibitions, recalls, and out-of-service orders) to address unsafe conditions or practices posing an imminent hazard; opening of packages to identify undeclared or non-compliant shipments, when the person in possession of the package refuses a request to open it; and the temporary detention and inspection of potentially non-compliant packages. 76 FR 11570 (codified at 49 CFR, Part 109). In conjunction with the final rule, the Department of Transportation (Department or DOT) developed an internal operations manual for training and use by its inspectors and investigators (collectively agents). The operations manual is a joint document created by the operating administrations that enforce the Hazardous Materials Regulations, 49 CFR parts 171–180 (HMR) [1], to provide guidance to agents who, in the course of conducting inspections, determine that they need to open a package, remove a package from transportation, or perform any other authorized function in Part 109. The manual seeks to establish baseline conditions that will ensure consistent application of the authorities exercised under 49 CFR part 109 at a minimum threshold. The guidance is intended to target and manage the use of enhanced inspection and enforcement authority in a manner that minimizes burdens on the transportation system while, at the same time, meets the overriding mission of transportation safety. The operations manual was made available to the public on the PHMSA Web site, *http://www.phmsa.dot.gov*.

On July 6, 2012, the President signed the Moving Ahead for Progress in the 21st Century Act, or the MAP–21, which included the Hazardous Materials Transportation Safety Improvement Act of 2012 (HMTSIA) as Title III of the statute. Public Law 112–141, 126 Stat. 405, July 6, 2012. Section 33008 of HMTSIA created a mandate for the Department to develop uniform performance standards for hazmat inspectors and investigators:

(a) In General—Not later than 18 months after the date of enactment of this Act, the Secretary shall develop uniform performance standards for training hazardous material inspectors and investigators on—

(1) how to collect, analyze, and publish findings from inspections and investigations of accidents or incidents involving the transportation of hazardous material; and

(2) how to identify noncompliance with regulations issued under chapter 51 of title 49, United States Code, and take appropriate enforcement action.

(b) Standards and Guidelines—The Secretary may develop—

(1) guidelines for hazardous material inspector and investigator qualifications;

(2) best practices and standards for hazardous material inspector and investigator training programs; and

(3) standard protocols to coordinate investigation efforts among Federal, State, and local jurisdictions on accidents or incidents involving the transportation of hazardous material.

(c) Availability—The standards, protocols, and guidelines established under this section—

(1) shall be mandatory for—

(A) the Department of Transportation's multimodal personnel conducting hazardous material enforcement inspections or investigations; and

(B) State employees who conduct federally funded compliance reviews, inspections, or investigations; and

(2) shall be made available to Federal, State, and local hazardous material safety enforcement personnel.

126 Stat. at 836.

Section 33009 of HMTSIA revised 49 U.S.C. 5121, to include a notification requirement. Congress also directed the Department to address certain hazmat transportation matters through rulemaking:

(a) Notice of Enforcement Measures—Section 5121(c)(1) is amended—

(1) in subparagraph (E), by striking ''and'' at the end;

(2) in subparagraph (F), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(G) shall provide to the affected offeror, carrier, packaging manufacturer or tester, or other person responsible for the package reasonable notice of—

''(i) his or her decision to exercise his or her authority under paragraph (1);

''(ii) any findings made; and

''(iii) any actions being taken as a result of a finding of noncompliance.''.

(b) Regulations—

(1) Matters To Be Addressed—Section 5121(e) is amended by adding at the end the following:

''(3) Matters To Be Addressed—The regulations issued under this subsection shall address—

''(A) the safe and expeditious resumption of transportation of perishable hazardous material, including radiopharmaceuticals and other medical products, that may require timely delivery due to life-threatening situations;

''(B) the means by which—

''(i) noncompliant packages that present an imminent hazard are placed out-of-service until the condition is corrected; and

''(ii) noncompliant packages that do not present a hazard are moved to their final destination;

''(C) appropriate training and equipment for inspectors; and

''(D) the proper closure of packaging in accordance with the hazardous material regulations.''.

(2) Finalizing Regulations—In accordance with section 5103(b)(2) of title 49, United States Code, not later than 1 year after the date of enactment of this Act, the Secretary shall take all actions necessary to finalize a regulation under paragraph (1) of this subsection.

* * * * *

126 Stat. at 836–7.

As described further below, we believe that the Department's current rules that were previously established through notice and comment rulemaking and existing policies and operating procedures thoroughly address the congressional mandates to address certain hazmat transportation matters. In PHM–7, the Department established procedural regulations for opening packages, removing packages from transportation, and closing packages. These regulations include the definition of key terms, including perishable hazardous material. The regulations address how the Department's agents will handle non-compliant packages that present an imminent hazard and those that do not. Moreover, the rules address when and how the Department's agents will open a package. And, if an agent opens a package, there are procedural rules for closing the package and ensuring its safe resumption of transportation, if applicable. In addition, the Department developed an internal operations manual for training and use by its hazmat inspectors and investigators across all modes of transportation. The operations manual's guidance is intended to target and manage the use of the enhanced inspection and enforcement authority in a uniform and consistent manner within the Department. At this time, we do not have any data or other information that indicate the rules, policies, and

[1] Under authority delegated by the Secretary of Transportation, four agencies within DOT enforce the Hazardous Materials Regulations, 49 CFR Parts 171–180 and other regulations, approvals, special permits, and orders issued under Federal Hazardous Materials Transportation Law, 49 U.S.C. §§ 5101 et seq.: (1) Federal Aviation Administration, 49 CFR 1.83(d)(1); (2) Federal Railroad Administration, 49 CFR 1.89(j); (3) Federal Motor Carrier Safety Administration, 49 CFR 1.87(d)(1); and (4) The Pipeline and Hazardous Materials Safety Administration, 49 CFR 1.97(b). The secretary has delegated authority to each respective operating administration to exercise the enhanced inspection and enforcement authority conferred by HMTSSRA. 71 FR 52751, 52753 (Sept. 7, 2006). The United States Coast Guard is authorized to enforce the Hazardous Materials Regulations in connection with certain transportation or shipment of hazardous materials by water but does not have Congressional/delegated authority to carry out the enhanced inspection, investigation, and enforcement authority.

operating procedures currently in place are inadequate or that additional regulations are necessary.

III. Summary of Proposals in This NPRM

In MAP–21 Congress directed the Secretary to address certain transportation matters related to the Department's enhanced inspection, investigation, and enforcement authority. The relevant MAP–21 mandates for this rulemaking are:

- Notice of enforcement measures;
- The safe and expeditious resumption of transportation of perishable hazardous material, including radiopharmaceuticals and other medical products that may require timely delivery due to life-threatening situations;
- The means by which non-compliant packages that present an imminent hazard are placed out-of- service until the condition is corrected;
- The means by which non-compliant packages that do not present a hazard are moved to their final destination;
- Appropriate training and equipment for inspectors; and
- The proper closure of packaging in accordance with the hazardous material regulations.

We are proposing in this rulemaking, as described further below, to clarify the Department's position with respect to perishable hazardous material, by amending the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, emergency orders, and emergency recalls. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives. We are also proposing to codify the statutory notification requirement in HMTSIA by incorporating into the regulations the Department's current notification procedures from the operations manual that was developed in conjunction with the PHM–7 final rule. Finally, we are proposing to add a new provision to address appropriate equipment for inspectors.

For the remaining mandates to address certain matters related to the Department's enhanced inspection, investigation, and enforcement authority, we are proposing no additional regulatory changes. We believe that the Department's current rules that were previously established through notice and comment rulemaking and existing policies and operating procedures thoroughly address the hazmat transportation matters identified by Congress. For instance, in a prior rulemaking, the Department established, in Part 109, procedural regulations for opening packages, removing packages from transportation, and closing packages. These regulations include the definition of key terms, including perishable hazardous material. The regulations address how the Department's agents will handle non-compliant packages that present an imminent hazard and those that do not. Moreover, the rules address when and how the Department's agents will open a package. And, if an agent opens a package, there are procedural rules for closing the package and ensuring its safe resumption of transportation, if applicable. In addition, the Department developed an internal operations manual for training and use by its hazmat inspectors and investigators across all modes of transportation. The operations manual's guidance is intended to target and manage within the Department the use of the enhanced inspection and enforcement authority in a uniform and consistent manner. At this time, we do not have any data or other information that indicate the rules, policies, and operating procedures currently in place are inadequate or that additional rulemaking is necessary.

Notice of Enforcement Measures

In PHM–7, we established procedures to implement the enhanced inspection, investigation, and enforcement authority conferred on the Secretary through HMTSSRA. In the NPRM for that rule, in response to commenters' concerns about notifying offerors and consignees about a possible delay in arrival, we agreed that all parties responsible for a shipment that is opened or removed from transportation need to be notified of the action taken. We said that ''DOT inspectors will be required to communicate the findings made and enforcement measures taken to the appropriate offeror, recipient, and carrier of the package . . .''. 73 FR 57288. In the final rule, we outlined how we would notify affected parties when an agent exercises one of the new authorities. 76 FR 11580. In the preamble to the final rule, we explained that the notification procedures would be incorporated into the Department's joint operations manual. Id. The notification procedures that we developed for the joint operations manual address situations where an agent may exercise a 49 CFR Part 109 authority for a package that is in transit. In this case, the person in possession of the package, such as a carrier, may not be the person responsible for the package, i.e. the offeror. Therefore, we set out separate procedures for immediately notifying the person in possession and the original offeror. Generally, the agent will verbally notify the person in possession. If the person in possession is not the original offeror, the agent will also take reasonable measures to notify the original offeror.

In MAP–21 Congress added a notification requirement to the Department's inspection and investigation authority. Specifically, Section 5121(c)(1) was amended to include new subparagraph (G). Section 5121(c)(1) now reads:

> ''(c) Inspections and investigations.—
> (1) In general.—A designated officer, employee, or agent of the Secretary—
> * * * * *
> (G) shall provide to the affected offeror, carrier, packaging manufacturer or tester, other person responsible for the package reasonable notice of—
> (i) his or her decision to exercise his or her authority under paragraph (1);
> (ii) any findings made; and
> (iii) any actions being taken as a result of a finding of noncompliance.

126 Stat. at 836–7.

We are proposing in this rulemaking to codify this statutory notification requirement by incorporating into the regulations the Department's current notification procedures from the joint operations manual. As discussed above, the joint operations manual includes procedures and guidance to agents for providing notice of enforcement measures taken under 49 CFR part 109. The procedures in the manual are comprehensive and comport with the statutory mandate. As such, under this proposal, a new notification section will be added to part 109, subpart B of 49 CFR. It will require that an agent, after exercising a 49 CFR part 109 inspection or investigation authority, immediately take reasonable measures to notify the appropriate person of the reason for the action being taken, the results of any preliminary investigation including apparent violations of the HMR, and any further action that may be warranted.

The Safe and Expeditious Resumption of Transportation of Perishable Hazardous Material

We addressed the opening, reclosing, and resumption of transportation of perishable hazardous material in a previous rulemaking. In PHM–7, we defined ''perishable hazardous material'' as ''a hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage, or

hazardous materials consigned for medical use, in the prevention, treatment, or cure of a disease or condition in human beings or animals where expeditious shipment and delivery meets a critical medical need.'' 76 FR 11592 (codified at 49 CFR § 109.1). Further, we established procedures for reclosing a package containing a perishable hazardous material and its safe and expeditious resumption of transportation. Section 109.13 contains the requirements for the closing of packages and the safe resumption of transportation, including a specific requirement pertaining to perishable hazardous material.

We believe the definition of perishable hazardous material and the rules, current procedures, and guidance already developed for reclosing packages, sufficiently address Congress' concern and the need for expeditious treatment of these types of materials. We also note that in the Department's joint operations manual, we have significantly restricted an agent's ability to handle or open a package containing perishable hazardous material. For example, an agent must have been trained in the handling of the specific material and may only open a perishable hazardous material package in a designated facility, if required, and have all safety equipment, handling equipment, and materials to properly close the package. Notwithstanding, in order to clarify the Department's position with respect to perishable hazardous material, we are proposing to amend the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, emergency orders, and emergency recalls. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives.

In consideration of the special characteristics and handling requirements of perishable hazardous material, we are proposing to establish a Department policy that its agents will not intentionally open packages containing perishable hazardous material unless a compelling safety need exists. However, in accordance with our current procedures, an agent may stop, remove, or have a package containing these types of materials transported to a facility for further examination and analysis. We solicit comments from the public whether excluding these types of materials is appropriate.

Handling of non-compliant packages

In MAP–21 Congress mandated that the Department take all actions necessary to finalize a regulation addressing the means by which non-compliant packages are processed when an agent exercises an authority under Part 109. Specifically, Section 5121(e) was amended to include new paragraph (3). The relevant amendment to Section 5121(e) includes the following language:

* * * * *

(3) Matters to be addressed.—The regulations issued under this subsection shall address—

* * * * *

(B) the means by which—

(i) noncompliant packages that present an imminent hazard are placed out-of-service until the condition is corrected; and

(ii) noncompliant packages that do not present a hazard are moved to their final destination.

* * * * *

126 Stat. at 837.

The Department's procedural rules for opening of packages, emergency orders, and emergency recalls are in 49 CFR part 109. These procedures address the means by which a non-compliant package that is found to be an imminent hazard is placed out-of-service. Specifically, in § 109.13, if an imminent hazard is found to exist after an agent opens a package, the operating administration's authorized official may issue an out-of-service order prohibiting the movement of the package. 49 CFR 109.13(b). The package must be removed from transportation until it is brought into compliance. Id. An out-of-service order is a type of emergency order. In 49 CFR, subpart C of part 109 contains the procedural regulations for issuing an out-of-service emergency order, including procedures for administrative review, reconsideration, and appellate review of an emergency order. Furthermore, the joint operations manual provides inspection personnel with step-by-step procedures and additional guidance for issuing an out-of-service order. For example, at least two levels of review and consultation with the operating administration's legal office is required before an emergency order can be issued. Moreover, the operations manual addresses documentation requirements, notification, service, publication, and termination requirements.

Regarding non-compliant packages that do not present a hazard, it is important to note that a non-compliant package may not continue in transportation until all identified non-compliant issues are resolved. 49 CFR 109.13(d). In the PHM–7 final rule where we established the enhanced enforcement procedures, we stated that for a non-compliant package, the agent would not close the package and that there is no obligation to bring that package into compliance. 76 FR 11587. Further, we stated, ''[t]he Department's operating administrations will not be responsible for bringing an otherwise non-compliant package into compliance and resuming its movement in commerce.'' Id. We reasoned that if the package does not conform to the HMR at the time of inspection, the act that a DOT official opened it in the course of an inspection or investigation will not make DOT or its agent responsible for bringing the package into compliance. Id.

In light of the above, we have already fulfilled the applicable mandate for the handling of non-compliant packages and no further action is required.

Appropriate Training and Equipment for Inspectors

Congress recognized that ''[t]here is currently no uniform training standard for hazardous materials ('hazmat') inspectors and investigators.'' H. Conf. Rep. No. 112–557 at 610 (2012). To address this problem, it mandated in MAP–21 that the Secretary establish uniform performance standards for training hazmat inspectors and investigators no later than eighteen months from the date of enactment of the Act. 126 Stat. at 836. The mandate authorizes the development of guidelines for hazmat inspector and investigator qualifications; best practices and standards for hazmat inspector and investigator training programs; and standard protocols to coordinate investigation efforts among Federal, State, and local jurisdictions on accidents or incidents involving the transportation of hazardous material. In order to achieve a uniform hazmat training standard, Congress required that the standards, protocols, and guidelines developed would be mandatory to the Department's multimodal personnel conducting hazmat enforcement inspections and investigations.

Additionally, Congress mandated that the Department take all actions necessary to finalize a regulation, no later than one year from the date of enactment of the Act, addressing appropriate training and equipment for inspectors when exercising an authority under 49 CFR Part 109. Specifically, Section 5121(e) was amended to include new paragraph (3). The relevant

amendment to Section 5121(e) includes the following language:

* * * * *

(3) Matters to be addressed.—The regulations issued under this subsection shall address—

* * * * *

(C) appropriate training and equipment for inspectors; and

* * * * *

126 Stat. at 837

Although the MAP–21 mandates here are training related, it is evident that the development of a uniform training scheme is essential because it will establish the foundation upon which future training for hazmat inspectors and investigators is expected to follow. As such, it is premature to require the Department to promulgate enforcement procedural regulations for hazmat training and equipment before the Department has had the opportunity to develop uniform performance training standards. This approach does not appear to be the best way to meet Congress' objective to ensure that all hazmat inspectors and investigations receive uniform and standardized training. It would be more appropriate for the Department to establish the uniform performance training standards, best practices, and protocols before it develops additional training regulations for its hazmat personnel. This would ensure that new training rules are consistent with the uniform training scheme.

Notwithstanding, we understand that proper training of inspectors and investigators is essential to ensure that the enhanced enforcement authority is used effectively and judiciously. In the NPRM for PHM–7, we explained that the operating administrations responsible for enforcement of the HMR—PHMSA, FMCSA, FAA, and FRA—worked together to develop the rule and a joint operations manual. 73 FR 57285. We further explained that the proposed regulations set out a framework for the procedures the operating administrations will employ when conducting inspections or investigations, thus ensuring consistency in approaches and enforcement measures among modes of transportation. Moreover, we stated that the final rule, implemented with the guidance of an operational manual, would ensure that this authority was properly used. Id. We expressed our confidence in this approach because with the cooperation of the operating administrations in the development of the rule, and the accompanying operations manual, it meant that all Department inspectors and investigators would have the same general training and modal specific instruction. 73 FR 57288.

Regarding equipment, we are proposing to add a new provision to address appropriate equipment for inspectors when they exercise a Part 109 authority. Under this proposal, a new equipment section will be added to new Subpart D—Equipment, requiring an agent to use the appropriate safety, handling, and other equipment authorized by his or her operating administration's equipment requirements for hazardous material inspectors and investigators.

Consequently, we do not believe that we should develop rules for appropriate training in this rulemaking. Instead, we advocate addressing any performance standards as part of the larger hazardous materials performance standard development activity currently underway. In the meantime, we believe the existing rules in 49 CFR Part 109 and the attendant operational procedures in the joint operations manual, as well as each operating administration's specific guidance for its enforcement staff, sufficiently address the training concern identified by Congress in the MAP–21 directive. Therefore, PHMSA does not believe that further action is necessary at this time.

The Proper Closure of Packaging in Accordance With HMR

In MAP–21 Congress mandated that the Department take all actions necessary to finalize a regulation addressing ''the proper closure of packaging in accordance with the hazardous material regulations.'' 126 Stat. at 837.

In PHM–7 we addressed reclosing of packages opened under the enhanced inspection, investigation, and enforcement authority. In several of the comments that we received about that rulemaking, the regulated community raised concerns about how we were going to reclose packages after they have been opened under the new authority. In the NPRM, we responded by stating that the Department was developing internal operational procedures and guidance to address the proper closure of packaging in accordance with the HMR. We also solicited further comment from the public on the factors that should be considered in the development of these procedures and guidance. 73 FR 57286. However, we also stated that an agent's obligation to reclose a package only arose if, after opening the package, an imminent hazard was found not to exist and the package otherwise complied with the HMR. 76 FR 11587. More importantly, we also said that the Department's operating administrations would not be responsible for bringing an otherwise non-specification or non-compliant package into compliance and resuming its movement in commerce. Id. If the package did not comply with the HMR the fact that a DOT official opened it in the course of an inspection or investigation would not make DOT or its inspector responsible for bringing the package into compliance. Id. In the final rule, we significantly revised the new rule for closing packages to cover each possible re-closure scenario: no imminent hazard found; imminent hazard found; package does not contain a hazardous material; and package contains a hazardous material not in compliance with the HMR. Id. Further, we stated that the inspector would only be required to reclose a package in accordance with the packaging manufacturer's closure instructions or other appropriate method when a package was opened and no imminent hazard was found. Id. In the joint operations manual we developed procedures for properly closing a package. These procedures include steps for reclosing a package. It also includes additional requirements and procedures to complete the re-closure process, including methods to thoroughly document the activities performed.

In light of the above, we believe the existing requirements in 49 CFR Part 109 for closing opened packages (Section 109.13) and the attendant operational procedures in the joint operations manual sufficiently address the matter identified by Congress in the MAP–21 directive. Therefore, no further action is necessary.

IV. Summary Review of Proposed Amendments

We are proposing to amend the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, emergency orders, and emergency recalls. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives. We are also proposing to add a notification provision to 49 CFR under Part 109 Subpart B—Inspections and Investigations. The provision will provide for the immediate and reasonable notification of enforcement action taken by an inspector or

investigator whenever he or she exercises one of the inspection and investigation authorities under 49 CFR Part 109, Subpart B, which includes the opening of packages; removing a package and related packages in a shipment from transportation; directing a package to be transported to a facility for examination and analysis; and authorizing properly qualified personnel to assist in activities conducted under Subpart B. The notice will include the reason for the action being taken, the results of any preliminary investigation including apparent violations of the HMR, and any further action that may be warranted. Finally, we are proposing to add a new provision to address appropriate equipment for inspectors when they exercise a Part 109 authority. The new equipment section will be added to 49 CFR under new Subpart D—Equipment. The provision will require an agent to use the appropriate safety, handling, and other equipment authorized by his or her operating administration's equipment requirements for hazardous material inspectors and investigators.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This notice of proposed rulemaking (NPRM) is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. § 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This NPRM would revise PHMSA's procedural regulations for opening of packages, emergency orders, and emergency recalls to address certain matters identified in the Hazardous Materials Transportation Safety Act of 2012 related to Department's enhanced inspection, investigation, and enforcement authority. The NPRM carries out the statutory mandate and clarifies DOT's role and responsibilities in ensuring that hazardous materials are being safely transported and promoting the regulated community's understanding and compliance with regulatory requirements applicable to specific situations and operations.

B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation's current regulatory system must not only protect public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness, and job creation.[2] Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, federal agencies are asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.[3]

By building off of each other, these three Executive Orders require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

This proposed rule revises 49 CFR part 109, which contains regulations on DOT inspection and investigation procedures. These regulations are not part of the HMR, which govern the transportation of hazmat, thus they do not carry any additional compliance requirements or costs for entities that must comply with the HMR. It is possible, however, that some carriers or shippers, who in the absence of this rule would have refused to open a package when requested, may experience delays that they would not have otherwise faced. DOT is not aware of any cases of shippers or carriers refusing to open packages and so anticipates that these costs will be minimal.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). 49 U.S.C. 5125(h) provides that the preemption provisions in Federal hazardous material transportation law do ''not apply to any procedure . . . utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.'' Accordingly, this proposed rule has no preemptive effect on State, local, or Indian tribe enforcement procedures and penalties, and preparation of a federalism assessment is not warranted.

D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have significant impact on a substantial number of small entities. I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule applies to offerors and carriers of hazardous materials, some of which are small entities; however, there will not be any economic impact on any person who complies with Federal hazardous materials law and the regulations and orders issued under that law.

Potentially affected small entities. The provisions in this proposed rule will apply to persons who perform, or cause to be performed, functions related to the transportation of hazardous materials in transportation in commerce. This includes offerors of hazardous materials and persons in physical control of a hazardous material during transportation in commerce. Such

[2] See *http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order*

[3] See *http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11798.pdf*

persons may primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of ''small business'' has the same meaning as under the Small Business Act (15 CFR parts 631–657c). Therefore, since no such special definition has been established, PHMSA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (NAICS Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), $18.5 million in revenues for motor carriers (NAICS Subgroup 484), and $18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 116,000 entities to which this proposed rule would apply (104,000 of which are motor carriers), we estimate that about 90 percent are small entities.

Potential cost impacts. This proposed rule revises 49 CFR Part 109, which contains regulations on DOT inspection and investigation procedures. These regulations are not part of the HMR, which govern the transportation of hazmat, thus they do not carry any additional compliance requirements or costs for entities that must comply with the HMR. It is possible, however, that some carriers or shippers, who in the absence of this rule would have refused to open a package when requested, may experience delays that they would not have otherwise faced. DOT is not aware of any cases of shippers or carriers refusing to open packages and so anticipates that these costs will be minimal.

Alternate proposals for small business. Because this proposed rule addresses a Congressional mandate, we have limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement the new authority will perpetuate the problem of undeclared hazardous material shipments and resulting incidents or releases. It will also leave PHMSA and other operating administrations without an effective plan to abate an imminent safety hazard.

F. Paperwork Reduction Act

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act of 1995 (PRA). The PRA requires Federal agencies to minimize the paperwork burden imposed on the American public by ensuring maximum utility and quality of federal information, ensuring the use of information technology to improve government performance, and improving the federal government's accountability for managing information collection activities. This final rule contains no new information collection requirements subject to the PRA.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The purpose of this rulemaking is to amend the Department's existing enforcement procedures to (1) to clarify the Department's position with respect to perishable hazardous material, by amending the opening of packages provision; (2) provide notice of enforcement measures to affected parties; and (3) address appropriate equipment for inspectors. Because this NPRM addresses Congressional mandates, we have limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. These inspection and enforcement procedures will not change the current inspection procedures for DOT, but will augment DOT's existing enforcement procedures and allow the Department to respond immediately and effectively to conditions or practices that pose serious threat to life, property, or the environment. PHMSA has initially determined that the implementation of the proposed rule will not have any significant impact on the quality of the human environment. PHMSA, however, invites comments about environmental impacts that the proposed rule might pose.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) which may be viewed at: *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

List of Subjects in 49 CFR Part 109

Inspections and investigations. Equipment.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 109—DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS PROCEDURAL REGULATIONS FOR OPENING OF PACKAGES, EMERGENCY ORDERS, AND EMERGENCY RECALLS

■ 1. The authority citation for part 109 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 § 4 (28 U.S.C. 2461 note); Pub. L. 104–121 §§ 212–213; Pub. L. 104–134 § 31001; 49 CFR 1.81, 1.97.

■ 2. In § 109.5, a new paragraph (b) is added to read as follows:

§ 109.5 Opening of packages.

* * * * *

(b) *Perishable hazardous material.* To ensure the expeditious transportation of a package containing a perishable hazardous material, an agent will utilize appropriate alternatives before exercising an authority under paragraph (a).

■ 3. Section 109.16 is added to read as follows:

§ 109.16 Notification of Enforcement Measures.

In addition to the notification requirements in § 109.7, an agent, after exercising an authority under this

Subpart, will immediately take reasonable measures to notify the offeror and the person in possession of the package, providing the reason for the action being taken, the results of any preliminary investigation including apparent violations of subchapter C of this chapter, and any further action that may be warranted.

■ 4. Subpart D is added to read as follows:

Subpart D—Equipment

§ 109.25 Equipment.

When an agent exercises an authority under Subpart B, the agent shall use the appropriate safety, handling, and other equipment authorized by his or her operating administration's equipment requirements for hazardous material inspectors and investigators.

Issued in Washington, DC, on May 13, 2013, under authority delegated in 49 CFR Part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–12123 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 78, No. 99
Wednesday, May 22, 2013

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Cancellation of May 17 President's Global Development Council Meeting

AGENCY: United States Agency for International Development.

ACTION: Notice of cancellation of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of cancellation of the meeting of the President's Global Development Council (GDC) on Friday, May 17, 2013 in the Eisenhower Executive Office Building, South Court Auditorium, Pennsylvania Avenue and 17th Street NW., which was published in the **Federal Register** on May 9, 2013, 78 FR 27178.

This notice is being cancelled due to exceptional circumstances of coordinating high-level schedules. A new meeting date and time will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Jayne Thomisee, 202–712–5506.

Dated: May 17, 2013.

Jayne Thomisee,

Executive Director & Policy Advisor, U.S. Agency for International Development.

[FR Doc. 2013–12206 Filed 5–21–13; 8:45 am]

BILLING CODE 6116–02–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of June 12 Advisory Committee on Voluntary Foreign Aid Meeting

AGENCY: United States Agency for International Development.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Wednesday, June 12, 2013.

Time: 2:30 p.m. to 4:00 p.m.

Location: Horizon Room, Ronald Reagan Building 1300 Pennsylvania Ave. NW., Washington, DC 20523.

Agenda

USAID Administrator Rajiv Shah will make opening remarks, followed by a panel discussion on the creation of a Feed the Future Civil Society Action Plan, and an opportunity for public comment. A draft agenda will be forthcoming on the ACVFA Web site at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

Stakeholders

The meeting is free and open to the public. Persons wishing to attend should register online at *http://www.usaid.gov/who-we-are/organization/advisory-committee/get-involved.*

FOR FURTHER INFORMATION CONTACT: Sandy Stonesifer, 202–712–4372.

Dated: May 15, 2013.

Sandy Stonesifer,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. 2013–12137 Filed 5–21–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt County (CA) Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Humboldt Resource Advisory Committee (RAC) will meet in Eureka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub.L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meetings are to review prior year project's progress. Should the Secure Rural Schools Act be reauthorized, the purpose of the meetings will also be to review and recommend project proposals.

DATES: The meetings will be held June 10, 2013; July 8, 2013 and July 22, 2013. All meetings will begin at 5:00 p.m.

ADDRESSES: The meetings will be held at the Six Rivers National Forest Office, 1330 Bayshore Way, Eureka, California 95501. Written comments may be submitted as described under Supplementary Information. 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 Six Rivers National Forest Supervisor's Office, 1330 Bayshore Way, Eureka, CA. 95501. Please call ahead to 707–442–1721 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lynn Wright, Committee Coordinator, 707–441–3562; email *hwright02@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review prior year project's progress. Should the Secure Rural Schools Act is reauthorized, the purpose of the meetings will also be to review and recommend project proposals.

Contact Committee Coordinator listed above for meeting agenda information. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by 5 days prior to meeting date to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to RAC Committee Coordinator, 1330 Bayshore Way, Eureka, CA. 95501 or by email to *hwright02@fs.fed.us,* or via facsimile to 707–445–8677. A summary of the meeting will be posted at *http://*

www.fs.usda.gov/main/srnf/home within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 15, 2013.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2013–12171 Filed 5–21–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet in Crescent City, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meetings are to review prior year project's progress. Should the Secure Rural Schools Act be reauthorized, the purpose of the meetings will also be to review and recommend project proposals.

DATES: The meetings will be held June 5, 2013; July 16, 2013; and July 22, 2013. All meetings will begin at 6:00 p.m.

ADDRESSES: The meetings will be held at the Del Norte County Unified School District, Redwood Room, 301 West Washington Boulevard, Crescent City CA 95531. Written comments may be submitted as described under Supplementary Information. 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 Six Rivers National Forest Supervisor's Office, 1330 Bayshore Way, Eureka, CA. 95501. Please call ahead to 707–442–1721 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lynn Wright, Committee Coordinator, 707–441–3562; email *hwright02@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The purpose of the meetings are to review prior year project's progress. If the Secure Rural Schools Act is reauthorized, the purpose of the meetings will also be to review and recommend project proposals. Contact Committee Coordinator listed above for meeting agenda information. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by 5 days prior to meeting date to be scheduled on the agenda. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/srnf/home* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 15, 2013.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2013–12160 Filed 5–21–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *Fax:* (202) 720–4120. *Email: michele.brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires 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 an information collection that RUS is submitting to OMB for extension.

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 will 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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to: Michele Brooks, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5162, South Building, 1400 Independence Ave. SW., Washington, DC 20250–1522. FAX: (202) 720–4120. *michele.brooks@wdc.usda.gov.*

Title: Weather Radio Transmitter Grant Program.

OMB Control Number: 0572–0124.

Type of Request: Revision of a currently approved information collection.

Abstract: The National Weather Service operates an All Hazards Early Warning System that alerts people in areas covered by its transmissions of approaching dangerous weather and other emergencies. The National Weather Service can typically provide warnings of specific weather dangers up to fifteen minutes prior to the event. At present, this system covers all major metropolitan areas and many smaller cities and towns; however, many rural areas lack NOAA Weather Radio coverage. The Rural Utilities Service's Weather Radio Transmitter Grant Program finances the installation of new transmitters to extend the coverage of the National Oceanic and Atmospheric Administration's Weather Radio system (NOAA Weather Radio) in rural America thereby promoting public safety and awareness. The President of the United States and the United States Congress have made $5 million in grant funds available to facilitate the expansion of NOAA Weather Radio system coverage into rural areas that are not covered or are poorly covered at this time. This grant program will continue to provide grant funds, on an expedited basis, for use in rural areas and communities of 50,000 or less inhabitants. Grant funds are available immediately and applications will be processed on a first-come, first-served basis until the appropriation is used in its entirety. Grant funds are used to purchase and install NOAA Weather Radio transmitters and antennas that are combined with donated tower space and other site resources to establish new rural NOAA Weather Radio transmitters. Eligible applicants must be non-profit corporations or associations (including Rural Development Utilities Programs electric and telecommunications borrower cooperatives), units of local or state government, or Federally-recognized Indian tribes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 hours per response.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120. Email: *marypat.daskal@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 13, 2013.

John Charles Padalino,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2013–12172 Filed 5–21–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of the Census

Federal Economic Statistics Advisory Committee Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC). The Committee will advise the Directors of the Economics and Statistics Administration's (ESA) two statistical agencies, the Bureau of Economic Analysis (BEA) and the Census Bureau, and the Commissioner of the Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: June 14, 2013. The meeting will begin at approximately 9:00 a.m. and adjourn at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Conference Center, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Barbara K. Atrostic, Designated Federal Official, Department of Commerce, U.S. Census Bureau, Research and Methodology Directorate, Room 2K267, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6442, email: *Barbara.kathryn.atrostic@census.gov.* For TTY callers, please call the Federal Relay Service (FRS) at 1–800–877–8339 and give them the above listed number you would like to call. This service is free and confidential.

SUPPLEMENTARY INFORMATION: Members of the FESAC are appointed by the Secretary of Commerce. The Committee advises the Directors of the BEA, the Census Bureau, and the Commissioner of the Department of Labor's BLS, on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee is established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Designated Federal Official named above. If you plan to attend the meeting, please register by Monday, June 10, 2013. You may access the online registration form with the following link: *http://www.regonline.com/fesac_june2013_meeting.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Designated Federal Official as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: May 15, 2013.

Thomas L. Mesenbourg, Jr.,

Senior Advisor Performing the Duties of the Director Bureau of the Census.

[FR Doc. 2013–12136 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–8–2013]

Foreign-Trade Zone 129—Bellingham, Washington; Authorization of Production Activity; T.C. Trading Company, Inc. (Eyeglass Assembly and Kitting), Blaine, WA

On January 17, 2013, the Port of Bellingham, grantee of FTZ 129, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of T.C. Trading Company, Inc., within Subzone 129B, in Blaine Washington.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting

public comment (78 FR 7395, 02/01/2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: May 17, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–12222 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–46–2013]

Foreign-Trade Zone (FTZ) 61—San Juan, Puerto Rico, Notification of Proposed Production Activity, Janssen Ortho LLC (Pharmaceutical Products Production), Gurabo, Puerto Rico

The Puerto Rico Trade and Export Company, grantee of FTZ 61, submitted a notification of proposed production activity to the FTZ Board on behalf of Janssen Ortho LLC (Janssen), located in Gurabo, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 29, 2013.

A separate application for subzone status at the Janssen facility was submitted and will be processed under Section 400.31 of the FTZ Board's regulations. The facility is used for the production of various prescription and over-the-counter pharmaceutical products. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products listed in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Janssen from customs duty payments on the foreign status components used in export production. On its domestic sales, Janssen would be able to choose the duty rates during customs entry procedures that apply to various prescription and over-the-counter pharmaceutical products, including: Anti-cancer; anti-diabetic and immunosuppressive medicaments; analgesics; antipyretic and anti-inflammatory agents; and, cough and cold preparations (duty free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Splenda sucralose; cobicistate silicon dioxide; metformin; canagliflozin; and darunavir ethanolate API (duty rates range from 86.2 cents/kg to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 1, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 16, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–12214 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–69–2013]

Foreign-Trade Zone 247—Erie, Pennsylvania; Application for Subzone; GE Transportation, Lawrence Park Township, Pennsylvania

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Erie-Western Pennsylvania Port Authority, grantee of FTZ 247, requesting special-purpose subzone status for the facility of GE Transportation, located in Lawrence Park Township, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 16, 2013.

The proposed subzone (350 acres) is located at 2901 East Lake Road, Lawrence Park Township, Erie County, Pennsylvania. No production activity has been requested at this time, but the company has indicated that a notification of proposed production activity will be submitted. Any such notifications will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 247.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 1, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 16, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: May 16, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–12218 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–70–2013]

Foreign-Trade Zone 247—Erie, Pennsylvania, Application for Subzone, GE Transportation, Grove City, Pennsylvania

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Erie-Western Pennsylvania Port Authority, grantee of FTZ 247, requesting special-purpose subzone status for the facility of GE Transportation, located in Grove City, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 16, 2013.

The proposed subzone (49 acres) is located at 1503 West Main Street Ext., Grove City, Mercer County, Pennsylvania. No production activity has been requested at this time, but the

company has indicated that a notification of proposed production activity will be submitted. Any such notifications will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 247.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 1, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 16, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: May 16, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–12221 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808, A–791–805, C–791–806, A–583–830]

Stainless Steel Plate in Coils From Belgium, South Africa, and Taiwan: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

SUMMARY: On September 7, 2012, the United States Court of Appeals for the Federal Circuit (CAFC) issued a decision not in harmony with the final determination of the Department of Commerce (the Department) that stainless steel plate in coils (SSPC) from Belgium, South Africa, and Taiwan with a nominal thickness of 4.75 millimeters (mm), but an actual thickness of less than 4.75 mm, is subject to the *AD and CVD Orders* on SSPC.[1] On March 26, 2013, the United States Court of International Trade (CIT) sustained the Department's results of redetermination issued in accordance with the CAFC's decision in *ArcelorMittal*.[2] Those results of redetermination found that SSPC with an actual thickness of less than 4.75 mm, regardless of its nominal thickness, is not subject to the *AD and CVD Orders* on SSPC.[3] Consistent with the CAFC's decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final CAFC judgment in this case is not in harmony with the Department's final determination and is amending its Final Scope Ruling concerning SSPC with a nominal thickness of 4.75 mm, but an actual thickness of less than 4.75 mm.[4]

DATES: *Effective Date:* September 17, 2012.

FOR FURTHER INFORMATION CONTACT: James Terpstra, 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) 482–3965.

SUPPLEMENTARY INFORMATION: Having received a scope inquiry request from ArcelorMittal Stainless Belgium N.V. (AMS Belgium),[5] the Department, on December 3, 2008, issued its Final Scope Ruling in which it relied upon 19 CFR 351.225(k)(2) to determine that SSPC with a nominal thickness of 4.75mm, but with an actual thickness less than 4.75mm, is included within the scope of the *AD and CVD Orders.*[6]

Following a request for a voluntary remand, the CIT remanded the Final Scope Ruling to the Department to reconsider whether SSPC with a nominal thickness of 4.75 mm, but an actual thickness of less than 4.75 mm, is subject to the *AD and CVD Orders.*[7] In remanding the case, the Court directed the Department to apply 19 CFR 351.225, in conjunction with the decisions of the CAFC in *Duferco Inc.* v. *United States,* 296 F.3d 1087 (Fed. Cir. 2002), and *Tak Fat Trading Co.* v. *United States,* 396 F. 3d 1378 (Fed. Cir. 2005).[8]

On remand, the Department re-examined the language of the scope and, based in part upon interpreting the language in the context of the SSPC industry, determined it to be ambiguous as to whether it covers SSPC with a nominal thickness of 4.75 mm, but an actual thickness of less than 4.75 mm.[9] Having found the scope language ambiguous, the Department then analyzed the criteria specified by 19 CFR 351.225(k)(1), *i.e.,* ''descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the {International Trade

[1] *See ArcelorMittal Stainless Belgium N.V.* v. *United States,* 694 F.3d 82 (Fed. Cir. 2012) (*ArcelorMittal*). Because the description of the scopes in the multiple SSPC orders is identical and given the nature of the inquiry, the Department has considered it appropriate pursuant to 19 CFR 351.225(m) to conduct a single inquiry and issue a single scope ruling that applies to all such orders. *See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa,* 64 FR 25288 (May 11, 1999); *Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 64 FR 27756 (May 21, 1999); *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 11520 (March 11, 2003); and *Notice of Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa,* 68 FR 11524 (March 11, 2003) (collectively, *AD and CVD Orders*). The antidumping orders on SSPC from Italy and South Korea and the countervailing duty order on Belgium were revoked effective August 31, 2011, November 16, 2011, and July 18, 2010, respectively. *See Stainless Steel Plate in Coils From Italy: Revocation of Antidumping Duty Order,* 76 FR 54207 (August 31, 2011); *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Stainless Steel Plate in Coils From the Republic of Korea; and Partial Revocation of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 76 FR 74771 (December 1, 2011); *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order,* 76 FR 25666 (May 5, 2011).

[2] *See ArcelorMittal Stainless Belgium N.V.* v. *United States,* Court No. 08–00434 (Ct. Int'l Trade Mar. 26, 2013) (memorandum and order) (*Final CIT Order*).

[3] *See* Results of Redetermination Pursuant to Remand, dated February 15, 2013 (Second Remand Redetermination).

[4] *See* Stainless Steel Plate in Coils from Belgium: Final Scope Ruling, dated December 3, 2008 (Final Scope Ruling).

[5] Formerly known as Ugine & ALZ Belgium N.V. (U&A) and currently known as Aperam Stainless Belgium A.V.

[6] *See* Final Scope Ruling at 13–14.

[7] *See ArcelorMittal Stainless Belgium N.V.* v. *United States,* Court No. 08–00434 (Ct. Int'l Trade Mar. 30, 2010) (remand order).

[8] *See id.* at 1–2.

[9] *See* Final Results of Redetermination Pursuant to Remand, dated July 29, 2010 (First Remand Redetermination), at 5–8, 16–17.

Commission},'' and found those to be non-dispositive as well.[10] The Department thus reincorporated its earlier analysis under 19 CFR 351.225(k)(2) to conclude that SSPC with a nominal thickness greater than or equal to 4.75 mm regardless of the actual thickness is included within the scope of the *AD and CVD Orders.*[11]

On July 12, 2011, the CIT sustained the Department's First Remand Redetermination.[12] AMS Belgium appealed the CIT's final judgment to the CAFC.

On September 7, 2012, the CAFC reversed the CIT's judgment. The CAFC concluded that substantial evidence did not support the Department's determination that the language of the SSPC orders is ambiguous and held that ''the plain meaning of the orders regarding the 4.75 mm thickness is a reference to actual thickness of products subject to the orders.'' [13]

On January 4, 2013, the CIT issued a remand order directing the Department to take action in accordance with the CAFC's decision in *ArcelorMittal* and to find that SSPC with an actual thickness of less than 4.75 mm is outside the scope of the *AD and CVD Orders.*[14] Pursuant to that order, the Department construed the scope of the *AD and CVD Orders* so that SSPC from Belgium with an actual thickness of less than 4.75 mm is not subject to the *AD and CVD Orders* on SSPC, regardless of its nominal thickness.[15] The CIT sustained the Department's remand redetermination on March 26, 2013.[16]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CAFC's September 7, 2012, judgment in *ArcelorMittal* constitutes a final decision of that court that is not in harmony with the Department's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

Because there is now a final court decision with respect to SSPC with an actual thickness of less than 4.75 mm, the Department amends its Final Scope Ruling and now finds that the scope of the *AD and CVD Orders* excludes SSPC with an actual thickness of less than 4.75 mm, regardless of its nominal thickness. Accordingly, the Department will issue revised instructions to U.S. Customs and Border Protection.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: May 14, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–12223 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See id.* at 8–12, 22–24.

[11] *See id.* at 25.

[12] *See ArcelorMittal Stainless Belg. N.V.* v. *United States,* Court No. 08–00434, Slip Op. 11–82 (Ct. Int'l Trade July 12, 2011).

[13] *See ArcelorMittal,* 694 F.3d at 88–90.

[14] *See ArcelorMittal Stainless Belgium N.V.* v. *United States,* Court No. 08–00434 (Ct. Int'l Trade Jan. 4, 2013) (remand order).

[15] *See* Second Remand Determination at 6–7, 10.

[16] *See Final CIT Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838]

Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review; 2012–2013

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

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2013, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain frozen warmwater shrimp from Brazil for the period of review (POR) of February 1, 2012, through January 31, 2013.[1] The Department received a timely request from the Ad Hoc Shrimp Trade Action Committee (Domestic Producers) in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil. On March 29, 2013, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil with respect to two companies.[2]

The Department stated in its initiation of this review that it intended to rely on U.S. Customs and Border Protection (CBP) data to select respondents.[3] However, our review of the CBP database, with respect to the companies for which this review was requested, showed no entries of subject merchandise during the POR.[4] We released the results of our CBP data query to the Domestic Producers, the only interested party to this segment of the proceeding, and invited them to comment on the CBP data. We received no comments on the CBP data.

On April 4, 2013, we sent a ''No Shipments Inquiry'' to CBP to confirm that there were no shipments or entries of subject merchandise during the POR from the companies subject to review. We received no information from CBP to contradict the results of our data query.

On April 29, 2013, we stated that because information from CBP indicates that there were no entries of subject merchandise during the POR from the companies covered by this review, we intend to rescind this review.[5] We invited parties to comment on our intent to rescind this administrative review. We did not receive comments from any interested party.

Rescission of Review

Section 351.213(d)(3) of the Department's regulations stipulates that the Secretary may rescind an administrative review if there were no entries, exports, or sales of the subject merchandise during the POR. As there were no entries, exports, or sales of the subject merchandise during the POR, we are rescinding this review of the antidumping duty order on certain frozen warmwater shrimp from Brazil pursuant to 19 CFR 351.213(d)(3). We intend to issue assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 78 FR 7397 (February 1, 2013).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 19197 (March 29, 2013).

[3] *See id.*

[4] *See* April 3, 2013, Memorandum to the File entitled ''Release of Customs and Border Protection (CBP) Data.''

[5] *See* April 29, 2013, Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, entitled ''Intent to Rescind Administrative Review.''

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 16, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–12211 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–24A12]

Export Trade Certificate of Review

ACTION: Notice of Application to Amend the Export Trade Certificate of Review Issued to Northwest Fruit Exporters, Application no. 84–24A12.

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–24A12.''

The Northwest Fruit Exporters' (''NWF'') original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984), and last amended on January 3, 2013 (78 FR 1837, January 9, 2013). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 227, Yakima, WA 98901.

Contact: James R. Archer, Manager, (509) 576–8004.

Application No.: 84–24A12.

Date Deemed Submitted: May 14, 2013.

Proposed Amendment: NWF seeks to amend its Certificate to:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Phillippi Fruit Company, Inc. (Wenatchee, WA); Quincy Fresh Fruit Co. (Quincy, WA); Western Sweet Cherry Group, LLC (Yakima, WA); and Whitby Farms, Inc. dba: Farm Boy Fruit Snacks LLC (Mesa, WA); and

2. Remove the following companies as Members of NWF's Certificate: Andrus & Roberts Produce Co. (Sunnyside, WA); Crown Packing, LLC (Wenatchee, WA), Garrett Ranches Packing (Wilder, ID); IM EX Trading Company (Yakima, WA); and Orondo Fruit Co., Inc. (Ornondo, WA); and

3. Change the name of the following member: Broetje Orchards of Prescott, WA is now Broetje Orchards LLC; and Nuchief Sales Inc. of Wenatchee, WA is now Honey Bear Tree Fruit Co., LLC.

Dated: May 15, 2013.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2013–12062 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC647

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Barge Mooring Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy (Navy) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to construction activities as part of a barge mooring project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the Navy to take, by Level B Harassment only, four species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than June 21, 2013.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Laws@noaa.gov*. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application as well as a list of the references used in this document may be obtained by writing to the address specified above, telephoning

the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Supplemental documents provided by the U.S. Navy may be found at the same web address. Documents cited in this notice may also be viewed, by appointment only, at the aforementioned physical address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

We received an application on February 6, 2013, from the Navy for the taking of marine mammals incidental to pile driving and removal in association with a barge mooring project in the Hood Canal at Naval Base Kitsap in Bangor, WA (NBKB). The Navy submitted a revised version of the application on April 8, 2013, which we deemed adequate and complete. The barge mooring project is expected to require approximately eight weeks and would occur between July 16 and September 30, 2013. Four species of marine mammals are expected to be affected by the specified activities: California sea lion (*Zalophus californianus californianus*), harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena vomerina*), and killer whale (transient only; *Orcinus orca*). These species may occur year-round in the Hood Canal, with the exception of the California sea lion, which is only present from late summer to late spring (August to early June).

NBKB provides berthing and support services to Navy submarines and other fleet assets. Commander Submarine Development Squadron Five (CSDS–5) is a tenant command on NBKB and is the working repository for deep ocean technology and operational, at-sea application of that technology. CSDS–5 currently moors and operates a research barge at the Service Pier on NBKB and is proposing to install mooring for a new larger research barge equipped with upgraded technology necessary for continuing the Navy mission. CSDS–5 currently conducts research equipment operations from an existing 115-ft by 35-ft barge with a 4-ft draft that was constructed in 1940 and cannot accommodate the new research equipment. A new larger barge measuring 260 ft by 85 ft with a 10-ft draft would replace the existing barge. Activities associated with the project include the removal of an existing mooring dolphin, the relocation and addition of floating pier sections, and the installation of up to twenty steel piles to support the barge, electrical transformer platform, and relocated pier sections (see Figures 1–2 and 1–3 in the Navy's application). All steel piles would be driven with a vibratory hammer for their initial embedment depths and may be finished with an impact hammer for proofing, as necessary. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Sound attenuation measures (i.e., bubble curtain) would be used during all impact hammer operations.

For pile driving activities, the Navy used thresholds recommended by NMFS for assessing project impacts, outlined later in this document. The Navy assumed practical spreading loss and used empirically-measured source levels from a similar project conducted at NBKB to estimate potential marine mammal exposures. Predicted exposures are outlined later in this document. The calculations predict that only Level B harassments would occur associated with pile driving or construction activities.

Description of the Specified Activity

NBKB is located on the Hood Canal approximately twenty miles (32 km) west of Seattle, Washington (see Figures 1–1 and 2–1 in the Navy's application). The proposed actions with the potential to cause harassment of marine mammals within the waterways adjacent to NBKB, under the MMPA, are vibratory and impact pile driving and removal of piles via vibratory driver associated with the barge mooring project. All in-water construction activities within the Hood Canal are only permitted during July 16–February 15 in order to protect spawning fish populations; however, the entire barge mooring project is scheduled to be completed by September 30, 2013.

Specific Geographic Region

The Hood Canal is a long, narrow fjord-like basin of the western Puget Sound. Throughout its 67-mile length, the width of the canal varies from one to two miles and exhibits strong depth/elevation gradients and irregular seafloor topography in many areas. Although no official boundaries exist along the waterway, the northeastern section of the canal extending from the mouth of the canal at Admiralty Inlet to the southern tip of Toandos Peninsula is referred to as the northern Hood Canal. NBKB is located within this region (see Figures 2–1 and 2–2 of the Navy's application). Please see Section 2 of the Navy's application for more information about the specific geographic region, including physical and oceanographic characteristics.

Project Description

The project consists of three components: The relocation and addition to the Port Operations pier, the removal of existing infrastructure, and the installation of the CSDS–5 research barge mooring piles. Each element is described below. The barge mooring project is expected to require approximately forty work days and would occur between July 16 and September 30, 2013. Please see Figures 2–2 and 2–3 for details of the proposed project area and site plan.

Relocation of Port Operations

In order to accommodate the new, larger CSDS–5 research barge, some portions of the Port Operations floating pier would be relocated to the south side of the Service Pier trestle. Several floating pier sections/modules would be relocated and seven new modules would be installed to complete the Port Operations infrastructure. Anchoring of the relocated and new floating pier modules would require the installation of three 24-in diameter hollow steel pipe piles. Additionally, four 20-in diameter piles would be installed to support a 12-ft by 16-ft electrical transformer platform.

Removal of Existing Infrastructure

Existing infrastructure must be removed in order to accommodate the new barge, including the existing mooring dolphin and concrete pile cap located north of the proposed relocated floating pier modules. Multiple steel piles would be removed, including six 24-in diameter steel batter piles and two 30-in diameter steel vertical piles. However, only one 24-inch steel pile would be removed with the use of vibratory pile driving equipment. The remaining piles would be removed by cutting them down at the mudline with hydraulic shears or by a diver utilizing a thermal lance, and lifting them out of the water for proper disposal.

Installation of the Barge Mooring Piles

The new research barge will be located at the east side of the Service Pier, and will be moored by five 36-in diameter and up to eight 48-in diameter hollow steel pipe piles. It is more likely that only four 48-in diameter piles would be needed, but this is a conservative estimate in order to ensure some flexibility is maintained for the final design.

In summary, the following is the maximum scenario for project pile driving/removal:

- Four 20-in diameter steel pipe piles approximately 100 ft long will be driven to depth of 55 ft,
- Three 24-in diameter steel pipe piles approximately 60 ft long will be driven to depth of 34 ft,
- Five 36-in diameter steel pipe piles approximately 100 ft long will be driven to depth of 55 ft,
- As many as eight 48-in diameter steel pipe piles approximately 115 ft long may be driven to depth of 70 ft, and
- One 24-in diameter steel pipe will be removed using vibratory pile driving equipment.

Methods

It is anticipated that a maximum of four piles can be driven per day, although this total is unlikely to be reached due to various delays that may be expected during construction work. The total number of days for both extraction and installation are not likely to exceed twenty workdays. Piles will be installed using mainly vibratory pile driving, which involves use of hydraulic-powered weights to vibrate a pile until the surrounding sediment liquefies, enabling the weight of the pile plus the pile driver to push the pile into the ground. For some piles, impact driving may be required to ensure load bearing capacity (proofing) or if substrate conditions do not allow the pile to reach the specified tip elevation with a vibratory driver. An impact hammer uses a rising and falling piston to repeatedly strike a pile and drive it into the ground. When the impact driver is required, it is expected that 500 strikes will be necessary per pile, resulting in approximately 2,000 strikes per day under the maximum scenario. All piles driven with an impact hammer will be surrounded by a bubble curtain or other sound attenuation device over the full water column to minimize in-water noise.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to SPLs (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (µPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level represents the sound level at a distance of 1 m from the source (referenced to 1 µPa). The received level is the sound level at the listener's position.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones. Underwater sound levels ('ambient sound') are comprised of multiple sources, including physical (e.g., waves, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction). Even in the absence of anthropogenic sound, the sea is typically a loud environment. A number of sources of sound are likely to occur within Hood Canal, including the following (Richardson *et al.,* 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In

general, ambient noise levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km (5.3 mi) from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.

• Precipitation noise: Noise from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.

• Biological noise: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.

• Anthropogenic noise: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies (Richardson *et al.,* 1995). Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they will attenuate (decrease) rapidly (Richardson *et al.,* 1995). Known sound levels and frequency ranges associated with anthropogenic sources similar to those that would be used for this project are summarized in Table 1. Details of each of the sources are described in the following text.

TABLE 1—REPRESENTATIVE SOUND LEVELS OF ANTHROPOGENIC SOURCES

Sound source	Frequency range (Hz)	Underwater sound level (dB re 1 μPa)	Reference
Small vessels	250–1,000	151 dB rms at 1 m (3.3 ft)	Richardson *et al.,* 1995.
Tug docking gravel barge	200–1,000	149 dB rms at 100 m (328 ft)	Blackwell and Greene, 2002.
Vibratory driving of 72-in (1.8 m) steel pipe pile	10–1,500	180 dB rms at 10 m (33 ft)	Reyff, 2007.
Impact driving of 36-in steel pipe pile	10–1,500	195 dB rms at 10 m	Laughlin, 2007.
Impact driving of 66-in cast-in-steel-shell pile	10–1,500	195 dB rms at 10 m	Reviewed in Hastings and Popper, 2005.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and removal, and possibly pneumatic chipping. The sounds produced by these activities fall into one of two sound types: pulsed and non-pulsed (defined in next paragraph). The distinction between these two general sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (e.g., Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sounds (e.g., explosions, gunshots, sonic booms, and impact pile driving) are brief, broadband, atonal transients (ANSI, 1986; Harris, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a decay period that may include a period of diminishing, oscillating maximal and minimal pressures. Pulsed sounds generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulse (intermittent or continuous sounds) can be tonal, broadband, or both. Some of these non-pulse sounds can be transient signals of short duration but without the essential properties of pulses (e.g., rapid rise time). Examples of non-pulse sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Ambient Sound

The underwater acoustic environment consists of ambient sound, defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The ambient underwater sound level of a region is defined by the total acoustical energy being generated by known and unknown sources, including sounds from both natural and anthropogenic sources. The sum of the various natural and anthropogenic sound sources at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, the ambient sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995).

Underwater ambient noise was measured at approximately 113 dB re 1μPa rms between 50 Hz and 20 kHz during the recent Test Pile Program (TPP) project, approximately 1.85 mi from the project area (Illingworth & Rodkin, Inc., 2012). In 2009, the average broadband ambient underwater noise levels were measured at 114 dB re 1μPa between 100 Hz and 20 kHz (Slater, 2009). Peak spectral noise from industrial activity was noted below the 300 Hz frequency, with maximum levels of 110 dB re 1μPa noted in the 125 Hz band. In the 300 Hz to 5 kHz range, average levels ranged between 83 and 99 dB re 1μPa. Wind-driven wave noise dominated the background noise environment at approximately 5 kHz and above, and ambient noise levels flattened above 10 kHz.

Sound Attenuation Devices

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices. There are several

types of sound attenuation devices including bubble curtains, cofferdams, and isolation casings (also called temporary noise attenuation piles [TNAP]), and cushion blocks. The Navy proposes to use bubble curtains, which create a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Bubble curtains may be confined or unconfined. An unconfined bubble curtain may consist of a ring seated on the substrate and emitting air bubbles from the bottom. An unconfined bubble curtain may also consist of a stacked system, that is, a series of multiple rings placed at the bottom and at various elevations around the pile. Stacked systems may be more effective than non-stacked systems in areas with high current and deep water (Oestman *et al.,* 2009).

A confined bubble curtain contains the air bubbles within a flexible or rigid sleeve made from plastic, cloth, or pipe. Confined bubble curtains generally offer higher attenuation levels than unconfined curtains because they may physically block sound waves and they prevent air bubbles from migrating away from the pile. For this reason, the confined bubble curtain is commonly used in areas with high current velocity (Oestman *et al.,* 2009).

Both environmental conditions and the characteristics of the sound attenuation device may influence the effectiveness of the device. According to Oestman *et al.* (2009):

- In general, confined bubble curtains attain better sound attenuation levels in areas of high current than unconfined bubble curtains. If an unconfined device is used, high current velocity may sweep bubbles away from the pile, resulting in reduced levels of sound attenuation.
- Softer substrates may allow for a better seal for the device, preventing leakage of air bubbles and escape of sound waves. This increases the effectiveness of the device. Softer substrates also provide additional attenuation of sound traveling through the substrate.
- Flat bottom topography provides a better seal, enhancing effectiveness of the sound attenuation device, whereas sloped or undulating terrain reduces or eliminates its effectiveness.
- Air bubbles must be close to the pile; otherwise, sound may propagate into the water, reducing the effectiveness of the device.
- Harder substrates may transmit ground-borne sound and propagate it into the water column.

The literature presents a wide array of observed attenuation results for bubble curtains (e.g., Oestman *et al.,* 2009, Coleman, 2011, California Department of Transportation, 2012). The variability in attenuation levels is due to variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. As a general rule, reductions of greater than 10 dB cannot be reliably predicted. The TPP reported a range of measured values for realized attenuation mostly within 6 to 12 dB (Illingworth & Rodkin, Inc., 2012). For 36-inch piles the average peak and rms reduction with use of the bubble curtain was 8 dB, where the averages of all bubble-on and bubble-off data were compared. For 48-inch piles, the average SPL reduction with use of a bubble curtain was 6 dB for average peak values and 5 dB for rms values (see Table 3). To avoid loss of attenuation from design and implementation errors, the Navy has required specific bubble curtain design specifications, including testing requirements for air pressure and flow prior to initial impact hammer use, and a requirement for placement on the substrate. We considered previous assumptions regarding effectiveness of the bubble curtain (approximately 10 dB realized attenuation, TPP measurements (approximately 7 dB overall), and other monitored projects (typically at least 8 dB realized attenuation), and determined that 8 dB is a realistic and achievable estimate of average SPL (rms) reduction.

Sound Thresholds

NMFS uses generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. To date, no studies have been conducted that examine impacts to marine mammals from pile driving sounds from which empirical sound thresholds have been established. Current NMFS practice (in relation to the MMPA) regarding exposure of marine mammals to sound is that cetaceans and pinnipeds exposed to impulsive sounds of 180 and 190 dB rms or above, respectively, are considered to have been taken by Level A (i.e., injurious) harassment. Behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (e.g., impact pile driving) and 120 dB rms for continuous sound (e.g., vibratory pile driving), but below injurious thresholds. For airborne sound, pinniped disturbance from haul-outs has been documented at 100 dB (unweighted) for pinnipeds in general, and at 90 dB (unweighted) for harbor seals. NMFS uses these levels as guidelines to estimate when harassment may occur.

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving would generate underwater noise that potentially could result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2)$$

where:

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably by the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as Hood Canal, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. The Navy previously conducted measurements for driving of steel piles

at NBKB as part of the TPP (Illingworth & Rodkin, Inc., 2012), and we have determined that use of those values is appropriate to determine reasonable SPLs and their associated affects on marine mammals that are likely to result from pile driving at NBKB. During the TPP, SPLs from driving of 24-, 36-, and 48-in piles by impact and vibratory hammers were measured. Because 20-in piles were not measured during the TPP, we use sound pressure levels from the 24-in piles as a conservative estimate. Sound levels associated with vibratory pile removal are assumed to be the same as those during vibratory installation (Reyff, 2007)—which is likely a conservative assumption—and have been taken into consideration in the modeling analysis. Results of the TPP are shown in Table 2.

TABLE 2—SUMMARY OF MEASURED UNDERWATER SPLS FROM TPP

Method	Pile size	Measured SPLs
Impact	24-in	180 dB re 1 μPa (rms) at 10 m.
Impact	36-in	196 dB re 1 μPa (rms) at 10 m.
Impact	48-in	194 dB re 1 μPa (rms) at 10 m.
Vibratory ...	24-in	160 dB re 1 μPa (rms) at 10 m.
Vibratory ...	36-in	169 dB re 1 μPa (rms) at 10 m.
Vibratory ...	48-in	172 dB re 1 μPa (rms) at 10 m.

Because it is unknown what size pile may be driven on any given day, the Navy uses the most conservative values (i.e., 196 dB for impact driving and 172 dB for vibratory driving), and practical spreading loss, to estimate distances to relevant thresholds and associated areas of ensonification (presented in Table 3). Predicted distances to thresholds for different sources are shown in Figures 6–1 and 6–2 of the Navy's application. The predicted area exceeding the threshold assumes a field free of obstruction, which is unrealistic due to land masses or bends in the canal. The actual distance to the behavioral disturbance thresholds for pile driving may be shorter than the calculated distance due to the irregular contour of the waterfront, the narrowness of the canal, and the maximum fetch (furthest distance sound waves travel without obstruction [i.e., line of site]) at the project area.

TABLE 3—DISTANCES TO RELEVANT SOUND THRESHOLDS AND AREAS OF ENSONIFICATION

Description	Effective source level (dB at 10 m) [1]	Distance to threshold (m) and associated area of ensonification (km^2)			
		190 dB	180 dB	160 dB	120 dB
Steel piles, impact	188	7, 0.0002	34, 0.0036	736, 1.702	n/a
Steel piles, vibratory	164	1, <0.0001	3, <0.0001	n/a	29,286 [2], 16.1

[1] 8 dB attenuation was assumed from use of bubble curtain.
[2] This distance cannot actually be attained at the project location. The area presented is actual.

Airborne Sound—Pile driving can generate airborne sound that could potentially result in disturbance to marine mammals (specifically, pinnipeds) which are hauled out or at the water's surface. As a result, the Navy analyzed the potential for pinnipeds hauled out or swimming at the surface near NBKB to be exposed to airborne SPLs that could result in Level B behavioral harassment. Although there is no official airborne sound threshold, NMFS assumes for purposes of the MMPA that behavioral disturbance can occur upon exposure to sounds above 100 dB re 20 μPa rms (unweighted) for all pinnipeds, except harbor seals. For harbor seals, the threshold is 90 dB re 20 μPa rms (unweighted).

As was discussed for underwater sound from pile driving, the intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. As before, measured values from the TPP were used to determine reasonable airborne SPLs and their associated effects on marine mammals that are likely to result from pile driving at NBKB. During the TPP, vibratory driving was measured at 102 dB re 20 μPa rms at 15 m and impact driving at 109 dB re 20 μPa rms at 15 m.

Based on these values and the assumption of spherical spreading loss, distances to relevant thresholds and associated areas of ensonification are presented in Table 4; these areas are depicted in Tables 6–3 and 6–4 of the Navy's application. There are no haul-out locations within these zones, which are encompassed by the zones estimated for underwater sound. Protective measures would be in place out to the distances calculated for the underwater thresholds, and the distances for the airborne thresholds would be covered fully by mitigation and monitoring measures in place for underwater sound thresholds. We recognize that pinnipeds in water that are within the area of ensonification for airborne sound could be incidentally taken by either underwater or airborne sound or both. We consider these incidences of harassment to be accounted for in the take estimates for underwater sound.

TABLE 4—DISTANCES TO RELEVANT SOUND THRESHOLDS AND AREAS OF ENSONIFICATION, AIRBORNE SOUND

Group	Threshold, re 20 μPa rms (unweighted)	Distance to threshold (m) and associated area of ensonification (km^2)	
		Impact driving	Vibratory driving
Harbor seals	90 dB	134, 0.0564	60, 0.0113
California sea lions	100 dB	42, 0.0055	19, 0.0011

Description of Marine Mammals in the Area of the Specified Activity

There are seven marine mammal species, four cetaceans and three pinnipeds, which may inhabit or transit through the waters nearby NBKB in the Hood Canal. These include the transient killer whale, harbor porpoise, Dall's porpoise (*Phocoenoides dalli dalli*), Steller sea lion (eastern stock only; *Eumetopias jubatus monteriensis*), California sea lion, harbor seal, and humpback whale (*Megaptera novaeangliae*). The Steller sea lion and humpback whale are the only marine mammals that may occur within the Hood Canal that are listed under the Endangered Species Act (ESA); the humpback whale is listed as endangered and the eastern distinct population segment (DPS) of Steller sea lion is listed as threatened. The Steller sea lion is typically present in low numbers in the Hood Canal only from approximately October through mid-April. The humpback whale is not typically present in Hood Canal, with no confirmed sightings found in the literature or the Orca Network database prior to January and February 2012, when one individual was observed repeatedly over a period of several weeks. No sightings have been recorded since that time and we consider the humpback whale to be a rare visitor to Hood Canal at most. While the southern resident killer whale is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in over 15 years. Therefore, these three stocks were excluded from further analysis.

This section summarizes the population status and abundance of these species. We have reviewed the Navy's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application instead of reprinting the information here. Table 5 lists the marine mammal species with expected potential for occurrence in the vicinity of NBKB during the project timeframe. The following information is summarized largely from NMFS Stock Assessment Reports.

TABLE 5—MARINE MAMMALS PRESENT IN THE HOOD CANAL IN THE VICINITY OF NBKB

Species	Stock abundance [1] (CV, N_{min})	Relative occurrence in Hood Canal	Season of occurrence
California sea lion U.S. Stock	296,750 (n/a, 153,337)	Common	Fall to late spring (Aug to early June).
Harbor seal WA inland waters stock	14,612 [2] (0.15, 12,844)	Common	Year-round; resident species in Hood Canal.
Killer whale West Coast transient stock	354 (n/a)	Rare to occasional presence	Year-round.
Dall's porpoise CA/OR/WA stock	42,000 (0.33, 32,106)	Rare to occasional presence	Year-round.
Harbor porpoise WA inland waters stock	10,682 (0.38, 7,841)	Possible regular to occasional presence.	Year-round.

[1] NMFS marine mammal stock assessment reports at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[2] This abundance estimate is greater than eight years old and is therefore not considered current.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters and shoreline areas of the northern hemisphere from temperate to polar regions. The eastern North Pacific subspecies is found from Baja California north to the Aleutian Islands and into the Bering Sea. Multiple lines of evidence support the existence of geographic structure among harbor seal populations from California to Alaska (Carretta *et al.,* 2011). However, because stock boundaries are difficult to meaningfully draw from a biological perspective, three separate harbor seal stocks are recognized for management purposes along the west coast of the continental U.S.: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2011). Multiple stocks are recognized in Alaska. Samples from Washington, Oregon, and California demonstrate a high level of genetic diversity and indicate that the harbor seals of Washington inland waters possess unique haplotypes not found in seals from the coasts of Washington, Oregon, and California (Lamont *et al.,* 1996). Only the Washington inland waters stock may be found in the project area.

Washington inland waters harbor seals are not protected under the ESA or listed as depleted under the MMPA. Because there is no current abundance estimate for this stock, there is no current estimate of potential biological removal (PBR). However, because annual human-caused mortality (13) is significantly less than the previously calculated PBR (771) the stock is not considered strategic under the MMPA. The stock is considered to be within its optimum sustainable population (OSP) level.

The best abundance estimate of the Washington inland waters stock of harbor seals is 14,612 (CV = 0.15) and the minimum population size of this stock is 12,884 individuals (Carretta *et al.,* 2011). Aerial surveys of harbor seals in Washington were conducted during the pupping season in 1999, during which time the total numbers of hauled-out seals (including pups) were counted (Jeffries *et al.,* 2003). Radio-tagging studies conducted at six locations collected information on harbor seal haul-out patterns in 1991–92, resulting in a correction factor of 1.53 (CV = 0.065) to account for animals in the water which are missed during the aerial surveys (Huber *et al.,* 2001), which, coupled with the aerial survey counts, provides the abundance estimate. Because the estimate is greater than eight years old, NMFS does not consider it current. However, it does represent the best available information regarding stock abundance. Harbor seal counts in Washington State increased at an annual rate of ten percent from 1991–96 (Jeffries *et al.,* 1997). However, a logistic model fit to abundance data from 1978–99 resulted in an estimated maximum net productivity rate of 12.6 percent (95% CI = 9.4–18.7%) and the population is thought to be stable (Jeffries *et al.,* 2003).

Historical levels of harbor seal abundance in Washington are unknown. The population was apparently greatly reduced during the 1940s and 1950s due to a state-financed bounty program and

remained low during the 1970s before rebounding to current levels (Carretta *et al.,* 2011). Data from 2004–08 indicate that a minimum of 3.8 harbor seals are killed annually in Washington inland waters commercial fisheries (Carretta *et al.,* 2011). Animals captured east of Cape Flattery are assumed to belong to this stock. The estimate is considered a minimum because there are likely additional animals killed in unobserved fisheries and because not all animals stranding as a result of fisheries interactions are likely to be recorded. Another 9.2 harbor seals per year are estimated to be killed as a result of various non-fisheries human interactions (Carretta *et al.,* 2011). Tribal subsistence takes of this stock may occur, but no data on recent takes are available.

Harbor seals are the most abundant marine mammal in Hood Canal, where they can occur anywhere year-round, and are the only pinniped that breeds in inland Washington waters and the only species of marine mammal that is considered resident in the Hood Canal (Jeffries *et al.,* 2003). They are year-round, non-migratory residents, pup (i.e., give birth) in Hood Canal, and the population is considered closed, meaning that they do not have much movement outside of Hood Canal (London, 2006). Surveys in the Hood Canal from the mid-1970s to 2000 show a fairly stable population between 600–1,200 seals, and the abundance of harbor seals in Hood Canal has likely stabilized at its carrying capacity of approximately 1,000 seals (Jeffries *et al.,* 2003).

Harbor seals were consistently sighted during Navy surveys and were found in all marine habitats including nearshore waters and deeper water, and have been observed hauled out on manmade objects such as buoys. Harbor seals were commonly observed in the water during monitoring conducted for other projects at NBKB in 2011. During most of the year, all age and sex classes (except newborn pups) could occur in the project area throughout the period of construction activity. Since there are no known pupping sites in the vicinity of the project area, harbor seal neonates would not generally be expected to be present during pile driving. Otherwise, during most of the year, all age and sex classes could occur in the project area throughout the period of construction activity. Harbor seal numbers increase from January through April and then decrease from May through August as the harbor seals move to adjacent bays on the outer coast of Washington for the pupping season. From April through mid-July, female harbor seals haul out on the outer coast of Washington at pupping sites to give birth. The main haul-out locations for harbor seals in Hood Canal are located on river delta and tidal exposed areas, with the closest haul-out to the project area being approximately ten miles (16 km) southwest of NBKB at Dosewallips River mouth, outside the potential area of effect for this project (London, 2006; see Figure 4–1 of the Navy's application).

California Sea Lion

California sea lions range from the Gulf of California north to the Gulf of Alaska, with breeding areas located in the Gulf of California, western Baja California, and southern California. Five genetically distinct geographic populations have been identified: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California and (5) Northern Gulf of California (Schramm *et al.,* 2009). Rookeries for the Pacific Temperate population are found within U.S. waters and just south of the U.S.-Mexico border, and animals belonging to this population may be found from the Gulf of Alaska to Mexican waters off Baja California. For management purposes, a stock of California sea lions comprising those animals at rookeries within the U.S. is defined (i.e., the U.S. stock of California sea lions) (Carretta *et al.,* 2011). Pup production at the Coronado Islands rookery in Mexican waters is considered an insignificant contribution to the overall size of the Pacific Temperate population (Lowry and Maravilla-Chavez, 2005).

California sea lions are not protected under the ESA or listed as depleted under the MMPA. Total annual human-caused mortality (at least 431) is substantially less than the potential biological removal (PBR, estimated at 9,200 per year); therefore, California sea lions are not considered a strategic stock under the MMPA. There are indications that the California sea lion may have reached or is approaching carrying capacity, although more data are needed to confirm that leveling in growth persists (Carretta *et al.,* 2011).

The best abundance estimate of the U.S. stock of California sea lions is 296,750 and the minimum population size of this stock is 153,337 individuals (Carretta *et al.,* 2011). The entire population cannot be counted because all age and sex classes are never ashore at the same time; therefore, the best abundance estimate is determined from the number of births and the proportion of pups in the population, with censuses conducted in July after all pups have been born. Specifically, the pup count for rookeries in southern California from 2008 was adjusted for pre-census mortality and then multiplied by the inverse of the fraction of newborn pups in the population (Carretta *et al.,* 2011). The minimum population size was determined from counts of all age and sex classes that were ashore at all the major rookeries and haul-out sites in southern and central California during the 2007 breeding season, including all California sea lions counted during the July 2007 census at the Channel Islands in southern California and at haul-out sites located between Point Conception and Point Reyes, California (Carretta *et al.,* 2011). An additional unknown number of California sea lions are at sea or hauled out at locations that were not censused and are not accounted for in the minimum population size.

Trends in pup counts from 1975 through 2008 have been assessed for four rookeries in southern California and for haul-outs in central and northern California. During this time period counts of pups increased at an annual rate of 5.4 percent, excluding six El Niño years when pup production declined dramatically before quickly rebounding (Carretta *et al.,* 2011). The maximum population growth rate was 9.2 percent when pup counts from the El Niño years were removed. However, the apparent growth rate from the population trajectory underestimates the intrinsic growth rate because it does not consider human-caused mortality occurring during the time series; the default maximum net productivity rate for pinnipeds (12 percent per year) is considered appropriate for California sea lions (Carretta *et al.,* 2011).

Historic exploitation of California sea lions include harvest for food by Native Americans in pre-historic times and for oil and hides in the mid-1800s, as well as exploitation for a variety of reasons more recently (Carretta *et al.,* 2011). There are few historical records to document the effects of such exploitation on sea lion abundance (Lowry *et al.,* 1992). Data from 2003–09 indicate that a minimum of 337 (CV = 0.56) California sea lions are killed annually in commercial fisheries. In addition, a summary of stranding database records for 2005–09 shows an annual average of 65 such events, which is likely a gross underestimate because most carcasses are not recovered. California sea lions may also be removed because of predation on endangered salmonids (17 per year, 2008–10) or incidentally captured during scientific research (3 per year, 2005–09) (Carretta *et al.,* 2011). Sea lion mortality has also been linked to the

algal-produced neurotoxin domoic acid (Scholin *et al.,* 2000). There is currently an Unusual Mortality Event (UME) declaration in effect for California sea lions. Future mortality may be expected to occur, due to the sporadic occurrence of such harmful algal blooms. Beginning in January 2013, elevated strandings of California sea lion pups have been observed in Southern California, with live sea lion strandings nearly three times higher than the historical average. The causes of this UME are under investigation (*http://www.nmfs.noaa.gov/pr/health/mmume/californiasealions2013.htm;* accessed April 10, 2013).

An estimated 3,000 to 5,000 California sea lions migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island during the non-breeding season from September to May (Jeffries *et al.,* 2000) and return south the following spring (Mate, 1975; Bonnell *et al.,* 1983). Peak numbers of up to 1,000 California sea lions occur in Puget Sound (including Hood Canal) during this time period (Jeffries *et al.,* 2000).

California sea lions are present in Hood Canal during much of the year with the exception of mid-June through August, and occur regularly at NBKB, as observed during Navy waterfront surveys conducted from April 2008 through June 2010 (Navy, 2010). They are known to utilize a diversity of man-made structures for hauling out (Riedman, 1990) and, although there are no regular California sea lion haul-outs known within the Hood Canal (Jeffries *et al.,* 2000), they are frequently observed hauled out at several opportune areas at NBKB (e.g., submarines, floating security fence, barges). As many as 81 California sea lions have been observed hauled out on a single day at NBKB (Agness and Tannenbaum, 2009a; Tannenbaum *et al.,* 2009a; Navy, 2011). All documented instances of California sea lions hauling out at NBKB have been on submarines docked at Delta Pier, approximately 0.85 mi north of Service Pier, and on pontoons of the security fence. California sea lions have also been observed swimming near the Explosives Handling Wharf on several occasions, approximately 1.85 mi north of Service Pier (Tannenbaum *et al.* 2009; Navy 2010), and likely forage in both nearshore and inland marine deeper water habitats in the vicinity.

Killer Whale

Killer whales are one of the most cosmopolitan marine mammals, found in all oceans with no apparent restrictions on temperature or depth, although they do occur at higher densities in colder, more productive waters at high latitudes and are more common in nearshore waters (Leatherwood and Dahlheim, 1978; Forney and Wade, 2006; Allen and Angliss, 2011). Killer whales are found throughout the North Pacific, including the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California. On the basis of differences in morphology, ecology, genetics, and behavior, populations of killer whales have largely been classified as ''resident'', ''transient'', or ''offshore'' (e.g., Dahlheim *et al.,* 2008). Several studies have also provided evidence that these ecotypes are genetically distinct, and that further genetic differentiation is present between subpopulations of the resident and transient ecotypes (e.g., Barrett-Lennard, 2000). The taxonomy of killer whales is unresolved, with expert opinion generally following one of two lines: Killer whales are either (1) a single highly variable species, with locally differentiated ecotypes representing recently evolved and relatively ephemeral forms not deserving species status, or (2) multiple species, supported by the congruence of several lines of evidence for the distinctness of sympatrically occurring forms (Krahn *et al.,* 2004). Resident and transient whales are currently considered to be unnamed subspecies (Committee on Taxonomy, 2011).

The resident and transient populations have been divided further into different subpopulations on the basis of genetic analyses, distribution, and other factors. Recognized stocks in the North Pacific include Alaska Residents, Northern Residents, Southern Residents, Gulf of Alaska, Aleutian Islands, and Bering Sea Transients, and West Coast Transients, along with a single offshore stock. West Coast Transient killer whales, which occur from California through southeastern Alaska, are the only type expected to potentially occur in the project area.

West Coast Transient killer whales are not protected under the ESA or listed as depleted under the MMPA. The estimated annual level of human-caused mortality (0) does not exceed the calculated PBR (3.5); therefore, West Coast Transient killer whales are not considered a strategic stock under the MMPA. It is thought that the stock grew rapidly from the mid-1970s to mid-1990s as a result of a combination of high birth rate, survival, as well as greater immigration of animals into the nearshore study area (DFO, 2009). The rapid growth of the population during this period coincided with a dramatic increase in the abundance of the whales' primary prey, harbor seals, in nearshore waters. Population growth began slowing in the mid-1990s and has continued to slow in recent years (DFO, 2009). Population trends and status of this stock relative to its OSP level are currently unknown, as is the actual maximum productivity rate. Analyses in DFO (2009) estimated a rate of increase of about six percent per year from 1975 to 2006, but this included recruitment of non-calf whales into the population. The default maximum net growth rate for cetaceans (4 percent) is considered appropriate pending additional information (Carretta *et al.,* 2011).

The West Coast transient stock is a trans-boundary stock, with minimum counts for the population of transient killer whales coming from various photographic datasets. Combining these counts of cataloged transient whales gives an abundance estimate of 354 individuals for the West Coast transient stock (Allen and Angliss, 2011). Although this direct count of individually identifiable animals does not necessarily represent the number of live animals, it is considered a conservative minimum estimate (Allen and Angliss, 2011). However, the number in Washington waters at any one time is probably fewer than twenty individuals (Wiles, 2004). The West Coast transient killer whale stock is not designated as depleted under the MMPA or listed under the ESA. The estimated annual level of human-caused mortality and serious injury does not exceed the PBR. Therefore, the West Coast Transient stock of killer whales is not classified as a strategic stock.

The estimated minimum mortality rate incidental to U.S. commercial fisheries is zero animals per year (Allen and Angliss, 2011). However, this could represent an underestimate as regards total fisheries-related mortality due to a lack of data concerning marine mammal interactions in Canadian commercial fisheries known to have potential for interaction with killer whales. Any such interactions are thought to be few in number (Allen and Angliss, 2011). Other mortality, as a result of shootings or ship strikes, has been of concern in the past. However, no ship strikes have been reported for this stock, and shooting of transients is thought to be minimal because their diet is based on marine mammals rather than fish. There are no reports of a subsistence harvest of killer whales in Alaska or Canada.

Transient occurrence in inland waters appears to peak during August and September which is the peak time for harbor seal pupping, weaning, and post-

weaning (Baird and Dill, 1995). In 2003 and 2005, small groups of transient killer whales (eleven and six individuals, respectively) were present in Hood Canal for significant periods of time (59 and 172 days, respectively) between the months of January and July. While present, the whales preyed on harbor seals in the subtidal zone of the nearshore marine and inland marine deeper water habitats (London, 2006).

Dall's Porpoise

Dall's porpoises are endemic to temperate waters of the North Pacific, typically in deeper waters between 30–62°N, and are found from northern Baja California to the northern Bering Sea. Stock structure for Dall's porpoises is not well known; because there are no cooperative management agreements with Mexico or Canada for fisheries which may take this species, Dall's porpoises are divided for management purposes into two discrete, noncontiguous areas: (1) Waters off California, Oregon, and Washington, and (2) Alaskan waters (Carretta *et al.,* 2011). Only individuals from the CA/OR/WA stock may occur within the project area.

Dall's porpoises are not protected under the ESA or listed as depleted under the MMPA. The minimum estimate of annual human-caused mortality (0.4) is substantially less than the calculated PBR (257); therefore, Dall's porpoises are not considered a strategic stock under the MMPA. The status of Dall's porpoises in California, Oregon and Washington relative to OSP is not known (Carretta *et al.,* 2011).

Dall's porpoise distribution on the U.S. west coast is highly variable between years and appears to be affected by oceanographic conditions (Forney and Barlow, 1998); animals may spend more or less time outside of U.S. waters as oceanographic conditions change. Therefore, a multi-year average of 2005 and 2008 summer/autumn vessel-based line transect surveys of California, Oregon, and Washington waters was used to estimate a best abundance of 42,000 (CV = 0.33) animals (Forney, 2007; Barlow, 2010). The minimum population is considered to be 32,106 animals. Dall's porpoises also occur in the inland waters of Washington, but the most recent estimate was obtained in 1996 (900 animals; CV = 0.40; Calambokidis *et al.,* 1997) and is not included in the overall estimate of abundance for this stock. Because distribution and abundance of this stock is so variable, population trends are not available (Carretta *et al.,* 2011). No information is available regarding productivity rates, and the default maximum net growth rate for cetaceans (4 percent) is considered appropriate (Carretta *et al.,* 2011).

Data from 2002–08, from all fisheries for which mortality data are available, indicate that a minimum of 0.4 animals are killed per year (Carretta *et al.,* 2011). Species-specific information is not available for Mexican fisheries, which could be an additional source of mortality for animals beyond the stock boundaries delineated for management purposes. No other sources of human-caused mortality are known.

In Washington, Dall's porpoises are most abundant in offshore waters where they are year-round residents, although interannual distribution is highly variable (Green *et al.,* 1992). Dall's porpoises are observed throughout the year in the Puget Sound north of Seattle, are seen occasionally in southern Puget Sound, and may also occasionally occur in Hood Canal. However, only a single Dall's porpoise has been observed at NBKB, in deeper water during a 2008 summer survey (Tannenbaum *et al.,* 2009a).

Harbor Porpoise

Harbor porpoises are found primarily in inshore and relatively shallow coastal waters (< 100 m) from Point Barrow to Point Conception. Various genetic analyses and investigation of pollutant loads indicate a low mixing rate for harbor porpoise along the west coast of North America and likely fine-scale geographic structure along an almost continuous distribution from California to Alaska (e.g., Calambokidis and Barlow, 1991; Osmek *et al.,* 1994; Chivers *et al.,* 2002, 2007). However, stock boundaries are difficult to draw because any rigid line is generally arbitrary from a biological perspective. On the basis of genetic data and density discontinuities identified from aerial surveys, eight stocks have been identified in the eastern North Pacific, including northern Oregon/Washington coastal and inland Washington stocks (Carretta *et al.,* 2011). The Washington inland waters stock includes individuals found east of Cape Flattery and is the only stock that may occur in the project area.

Harbor porpoises of Washington inland waters are not protected under the ESA or listed as depleted under the MMPA. Because there is no current abundance estimate for this stock, there is no current estimate of PBR. However, because annual human-caused mortality (2.6) is less than the previously calculated PBR (63) the stock is not considered strategic under the MMPA. The status of harbor porpoises in Washington inland waters relative to OSP is not known (Carretta *et al.,* 2011).

The best estimate of abundance for this stock is derived from aerial surveys of the inland waters of Washington and southern British Columbia conducted during August of 2002 and 2003. When corrected for availability and perception bias, the average of the 2002–03 estimates of abundance for U.S. waters resulted in an estimated abundance for the Washington Inland Waters stock of harbor porpoise of 10,682 (CV = 0.38) animals (Laake *et al.,* 1997; Carretta *et al.,* 2011), with a minimum population estimate of 7,841 animals. Because the estimate is greater than eight years old, NMFS does not consider it current. However, it does represent the best available information regarding stock abundance.

Although long-term harbor porpoise sightings in southern Puget Sound declined from the 1940s through the 1990s, sightings and strandings have increased in Puget Sound and northern Hood Canal in recent years and harbor porpoise are now considered to regularly occur year-round in these waters (Carretta *et al.,* 2011). Reasons for the apparent decline, as well as the apparent rebound, are unknown. Recent observations may represent a return to historical conditions, when harbor porpoises were considered one of the most common cetaceans in Puget Sound (Scheffer and Slipp, 1948). No information regarding productivity is available for this stock and NMFS considers the default maximum net productivity rate for cetaceans (4 percent) to be appropriate.

Data from 2005–09 indicate that a minimum of 2.2 Washington inland waters harbor seals are killed annually in U.S. commercial fisheries (Carretta *et al.,* 2011). Animals captured in waters east of Cape Flattery are assumed to belong to this stock. This estimate is considered a minimum because the Washington Puget Sound Region salmon set/drift gillnet fishery has not been observed since 1994, and because of a lack of knowledge about the extent to which harbor porpoise from U.S. waters frequent the waters of British Columbia and are, therefore, subject to fishery-related mortality. However, harbor porpoise takes in the salmon drift gillnet fishery are unlikely to have increased since the fishery was last observed, when few interactions were recorded, due to reductions in the number of participating vessels and available fishing time. Fishing effort and catch have declined throughout all salmon fisheries in the region due to management efforts to recover ESA-listed salmonids (Carretta *et al.,* 2011).

In addition, an estimated 0.4 animals per year are killed by non-fishery human causes (e.g., ship strike, entanglement). In 2006, a UME was declared for harbor porpoises throughout Oregon and Washington, and a total of 114 strandings were reported in 2006–07. The cause of the UME has not been determined and several factors, including contaminants, genetics, and environmental conditions, are still being investigated (Carretta *et al.,* 2011).

Prior to recent construction projects conducted by the Navy at NBKB, harbor porpoises were considered to have only occasional occurrence in the project area. A single harbor porpoise had been sighted in deeper water at NBKB during 2010 field observations (Tannenbaum *et al.,* 2011). However, while implementing monitoring plans for work conducted from July–October, 2011, the Navy recorded multiple sightings of harbor porpoise in the deeper waters of the project area (HDR, Inc., 2012). Following these sightings, the Navy conducted dedicated line transect surveys, recording multiple additional sightings of harbor porpoise, and have revised local density estimates accordingly.

Potential Effects of the Specified Activity on Marine Mammals

We have determined that pile driving and removal (depending on technique used), as outlined in the project description, has the potential to result in behavioral harassment of marine mammals present in the project area. Pinnipeds spend much of their time in the water with heads held above the surface and therefore are not subject to underwater noise to the same degree as cetaceans (although they are correspondingly more susceptible to exposure to airborne sound). For purposes of this assessment, however, pinnipeds are conservatively assumed to be available to be exposed to underwater sound 100 percent of the time that they are in the water.

Marine Mammal Hearing

The primary effect on marine mammals anticipated from the specified activities would result from exposure of animals to underwater sound. Exposure to sound can affect marine mammal hearing. When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate functional hearing groups for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (thirteen species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and nineteen species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (six species of true porpoises, four species of river dolphins, two members of the genus *Kogia,* and four dolphin species of the genus *Cephalorhynchus*): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

Two pinniped and three cetacean species could potentially occur in the proposed project area during the project timeframe. Of the cetacean species that may occur in the project area, the killer whale is classified as a mid-frequency cetacean, and the two porpoises are classified as high-frequency cetaceans (Southall *et al.,* 2007).

Underwater Sound Effects

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (e.g., sand) would absorb or attenuate the sound more readily than hard substrates (e.g., rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity, ranging from effects such as behavioral disturbance, tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to mortality (Yelverton *et al.,* 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Marine mammals depend on acoustic cues for vital biological functions, (e.g., orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on both the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to

TTS could cause PTS. PTS, in the unlikely event that it occurred, would constitute injury, but TTS is not considered injury (Southall *et al.,* 2007). It is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment or any significant non-auditory physical or physiological effects for reasons discussed later in this document. Some behavioral disturbance is expected, but it is likely that this would be localized and short-term because of the short project duration.

Several aspects of the planned monitoring and mitigation measures for this project (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections later in this document) are designed to detect marine mammals occurring near the pile driving to avoid exposing them to sound pulses that might, in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of pile driving sound are high enough that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves would reduce or (most likely) avoid any possibility of hearing impairment. Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure for any given individual and the planned monitoring and mitigation measures. The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa^2-s (i.e., 186 dB sound exposure level [SEL] or approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB re 1 µPa rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Levels greater than or equal to 190 dB re 1 µPa rms are expected to be restricted to radii no more than 5 m (16 ft) from the pile driving. For an odontocete closer to the surface, the maximum radius with greater than or equal to 190 dB re 1 µPa rms would be smaller.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.,* 2009). To avoid the potential for injury, NMFS has determined that cetaceans should not be exposed to pulsed underwater sound at received levels exceeding 180 dB re 1 µPa rms. As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 µPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to pile driving activity might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to pile driving might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa^2-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Measured source levels from impact pile driving can be as high as 214 dB re 1 µPa at 1 m (3.3 ft). Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.,* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p re 1 µPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.,* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or

injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2003/2004; Southall *et al.,* 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003/04). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003/04).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.,* 2004; Wartzok *et al.,* 2003/04; Nowacek *et al.,* 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Since pile driving would likely only occur for a few hours a day, over a short period of time, it is unlikely to result in permanent displacement. Any potential impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect the long-term fitness of the species.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (e.g., Clark *et al.,* 2009) and cause increased stress levels (e.g., Foote *et al.,* 2004; Holt *et al.,* 2009).

Masking has the potential to impact species at population, community, or even ecosystem levels, as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic

effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking. However, the sum of sound from the proposed activities is confined in an area of inland waters (San Diego Bay) that is bounded by landmass; therefore, the sound generated is not expected to contribute to increased ocean ambient sound.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Airborne Sound Effects

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving sound would have less impact on cetaceans than pinnipeds because sound from atmospheric sources does not transmit well underwater (Richardson *et al.,* 1995); thus, airborne sound would only be an issue for hauled-out pinnipeds in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms.

Anticipated Effects on Habitat

The proposed activities at NBKB would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 10 km, foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (i.e., fish) near NBKB and minor impacts to the immediate substrate during installation and removal of piles during the wharf construction project.

Pile Driving Effects on Potential Prey (Fish)

Construction activities would produce both pulsed (i.e., impact pile driving) and continuous (i.e., vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005, 2009) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving (or other types of continuous sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB re 1 μPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the wharf construction project. However, adverse impacts may occur to a few species of rockfish (bocaccio [*Sebastes paucispinis*], yelloweye [*S. ruberrimus*] and canary [*S. pinniger*] rockfish) and salmon (chinook [*Oncorhynchus tshawytscha*] and summer run chum) which may still be present in the project area despite operating in a reduced work window in an attempt to avoid important fish spawning time periods. Impacts to these species could result from potential impacts to their eggs and larvae.

Pile Driving Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in the Hood Canal. Avoidance by potential prey (i.e., fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the Hood Canal and nearby vicinity.

Given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Therefore, pile driving is not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, we must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of

effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Measurements from similar pile driving elsewhere at NBKB were coupled with practical spreading loss to estimate zones of influence (ZOIs; see ''Estimated Take by Incidental Harassment''); these values were used to develop mitigation measures for pile driving activities at NBKB. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the measures described later in this section, the Navy would employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) Comply with applicable equipment sound standards and ensure that all construction equipment has sound control devices no less effective than those provided on the original equipment.

(c) For in-water heavy machinery work other than pile driving (using, e.g., standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile); (3) removal of the pile from the water column/substrate via a crane (i.e., deadpull); or (4) the placement of sound attenuation devices around the piles. For these activities, monitoring would take place from 15 minutes prior to initiation until the action is complete.

Monitoring and Shutdown for Pile Driving

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving and removal activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury, serious injury, or death of marine mammals. Radial distances for shutdown zones are shown in Table 4. However, a minimum shutdown zone of 10 m will be established during all pile driving and removal activities, regardless of the estimated zone. These precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for pulsed and non-pulsed sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Proposed Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Tables 4 and 5. Given the size of the disturbance zone for vibratory pile driving), it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (e.g., what may be reasonably observed by visual observers stationed within the WRA) would be observed.

In order to document observed incidences of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. If acoustic monitoring is being conducted for that pile, a received SPL may be estimated, or the received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating incidental harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data. That information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidences of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from 15 minutes prior to initiation through 15 minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science, wildlife management,

mammalogy, or related fields (bachelor's degree or higher is required);

- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for 15 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (i.e., when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Sound Attenuation Devices

Bubble curtains shall be used during all impact pile driving. The device will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column, and the lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. Testing of the device by comparing attenuated and unattenuated strikes is not possible because of requirements in place to protect marbled murrelets (an ESA-listed bird species under the jurisdiction of the USFWS). However, in order to avoid loss of attenuation from design and implementation errors in the absence of such testing, a performance test of the device shall be conducted prior to initial use. The performance test shall confirm the calculated pressures and flow rates at each manifold ring. In addition, the contractor shall also train personnel in the proper balancing of air flow to the bubblers and shall submit an inspection/performance report to the Navy within 72 hours following the performance test.

Timing Restrictions

In Hood Canal, designated exist timing restrictions for pile driving activities to avoid in-water work when salmonids and other spawning forage fish are likely to be present. The in-water work window is July 16-February 15. The barge mooring project would occur during a portion of that period, from July 16-September 30. During the majority of this timeframe, impact pile driving will only occur starting two hours after sunrise and ending two hours before sunset due to marbled murrelet nesting season. After September 23, in-water construction activities will occur during daylight hours (sunrise to sunset).

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a 30-second waiting period. This procedure is repeated two additional times. However, implementation of soft start for vibratory pile driving during previous pile driving work at NBKB has led to equipment failure and serious human safety concerns. Project staff have reported that, during power down from the soft start, the energy from the hammer is transferred to the crane boom and block via the load fall cables and rigging resulting in unexpected damage to both the crane block and crane boom. This differs from what occurs when the hammer is powered down after a pile is driven to refusal in that the rigging and load fall cables are able to be slacked prior to powering down the hammer, and the vibrations are transferred into the substrate via the pile rather than into the equipment via the rigging. One dangerous incident of equipment failure has already occurred, with a portion of the equipment shearing from the crane and falling to the deck. Subsequently, the crane manufacturer has inspected the crane booms and discovered structural fatigue in the boom lacing and main structural components, which will ultimately result in a collapse of the crane boom. All cranes were new at the beginning of the job. In addition, the vibratory hammer manufacturer has attempted to install dampers to mitigate the problem, without success. As a result of this dangerous situation, the measure will not be required for this project. This information was provided to us after the Navy submitted their request for authorization and is not reflected in that document.

For impact driving, soft start will be required, and contractors will provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 30-second waiting period, then two subsequent three strike sets.

We have carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that we must, where applicable, set forth ''requirements

pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy would implement the following procedures for pile driving:

- MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report would be submitted to NMFS within 90 working days of the completion of marine mammal monitoring. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any adverse responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and a refined take estimate based on the number of marine mammals observed during the course of construction. A final report would be prepared and submitted within 30 days following resolution of comments on the draft report.

Estimated Take by Incidental Harassment

With respect to the activities described here, the MMPA defines ''harassment'' as: ''Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury or mortality is considered discountable. However, as noted earlier, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to an underwater sound by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. This practice potentially overestimates the numbers of marine mammals actually subject to disturbance that would correctly be considered a take under the MMPA. For example, during the past ten years, transient killer whales have been observed within the project area twice. On the basis of that information, an estimated amount of potential takes for killer whales is presented here. However, while a pod of killer whales could potentially visit again during the project timeframe, and thus be taken, it is more likely that they would not. Although incidental take of killer whales and Dall's porpoises was authorized for 2011–12 activities at NBKB on the basis of past observations of these species, no such takes were recorded and no individuals of these species were observed. Similarly, estimated actual take levels (observed takes extrapolated to the remainder of unobserved but ensonified area) were significantly less than authorized levels of take for the remaining species.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals are year-round residents of Hood Canal and sea lions are known to haul-out on submarines and other man-made objects at the

NBKB waterfront (although typically at a distance of a mile or greater from the project site). Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect relatively small numbers of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy has requested authorization for the incidental taking of small numbers of California sea lions, harbor seals, transient killer whales, and harbor porpoises in the Hood Canal that may result from pile driving during construction activities associated with the barge mooring project described previously in this document.

The humpback whale is not expected to occur in the project area, and Steller sea lions are not expected to occur during the project timeframe. The earliest documented occurrence of Steller sea lions at NBKB occurred on September 30, 2010, when five individuals were observed at Delta Pier during daily surveys. During monitoring associated with the 2011 TPP, Steller sea lions were documented as arriving on October 8, but had not previously been regularly observed prior to November.

The takes requested are expected to have no more than a minor effect on individual animals and no effect at the population level for these species. Any effects experienced by individual marine mammals are anticipated to be limited to short-term disturbance of normal behavior or temporary displacement of animals near the source of the sound.

Marine Mammal Densities

For all species, the best scientific information available was used to derive density estimates and the maximum appropriate density value for each species for each site was used in the marine mammal take assessment calculation. These values were derived or confirmed by experts convened to develop such information for use in Navy environmental compliance efforts in the Pacific Northwest (Navy, 2013). For harbor seals, this involved published literature describing harbor seal research conducted in Washington and Oregon as well as more specific counts conducted in Hood Canal (Huber *et al.,* 2001; Jeffries *et al.,* 2003). The best information available for the remaining species in Hood Canal came from surveys conducted by the Navy at the NBKB waterfront or in the vicinity of the project area.

Beginning in April 2008, Navy personnel have recorded sightings of marine mammals occurring at known haul-outs along the NBKB waterfront, including docked submarines or other structures associated with NBKB docks and piers and the nearshore pontoons of the floating security fence. Sightings of marine mammals within the waters adjoining these locations were also recorded. Sightings were attempted whenever possible during a typical work week (i.e., Monday through Friday), but inclement weather, holidays, or security constraints often precluded surveys. These sightings took place frequently, although without a formal survey protocol. During the surveys, staff visited each of the above-mentioned locations and recorded observations of marine mammals. Surveys were conducted using binoculars and the naked eye from shoreline locations or the piers/wharves themselves. Because these surveys consist of opportunistic sighting data from shore-based observers, largely of hauled-out animals, there is no associated survey area appropriate for use in calculating a density from the abundance data. Data were compiled for the period from April 2008 through November 2011 for analysis in this proposed IHA, and these data provide the basis for take estimation for California sea lions. Other information, including sightings data from other Navy survey efforts at NBKB, is available for this species, but these data provide the most conservative (i.e., highest) local abundance estimates (and thus the highest estimates of potential take).

In addition, vessel-based marine wildlife surveys were conducted according to established survey protocols during July through September 2008 and November through May 2009–10 (Tannenbaum *et al.,* 2009, 2011). Eighteen complete surveys of the nearshore area resulted in observations of four marine mammal species (harbor seal, California sea lion, harbor porpoise, and Dall's porpoise). These surveys operated along pre-determined transects parallel to the shoreline from the nearshore out to approximately 1,800 ft (549 m) from shoreline, at a spacing of 100 yd, and covered the entire NBKB waterfront (approximately 3.9 km^2 per survey) at a speed of 5 kn or less. Two observers recorded sightings of marine mammals both in the water and hauled out, including date, time, species, number of individuals, age (juvenile, adult), behavior (swimming, diving, hauled out, avoidance dive), and haul-out location. Positions of marine mammals were obtained by recording distance and bearing to the animal with a rangefinder and compass, noting the concurrent location of the boat with GPS, and, subsequently, analyzing these data to produce coordinates of the locations of all animals detected. These surveys resulted in the only observation of a Dall's porpoise near NBKB.

The Navy also conducted vessel-based line transect surveys in Hood Canal on non-construction days during the 2011 TPP in order to collect additional data for species present in Hood Canal. These surveys were primarily detected three marine mammal species (harbor seal, California sea lion, and harbor porpoise), and included surveys conducted in both the main body of Hood Canal, near the project area, and baseline surveys conducted for comparison in Dabob Bay, an area of Hood Canal that is not affected by sound from Navy actions at the NBKB waterfront. The surveys operated along pre-determined transects that followed a double saw-tooth pattern to achieve uniform coverage of the entire NBKB waterfront. The vessel traveled at a speed of approximately 5 kn when transiting along the transect lines. Two observers recorded sightings of marine mammals both in the water and hauled out, including the date, time, species, number of individuals, and behavior (swimming, diving, etc.). Positions of marine mammals were obtained by recording the distance and bearing to the animal(s), noting the concurrent location of the boat with GPS, and subsequently analyzing these data to produce coordinates of the locations of all animals detected. Sighting information for harbor porpoises was corrected for detectability ($g(0) = 0.54$; Barlow, 1988; Calambokidis *et al.,* 1993; Carretta *et al.,* 2001). Distance sampling methodologies were used to estimate densities of animals for the data. This information provides the best information for harbor porpoises.

The cetaceans, as well as the harbor seal, appear to range throughout Hood Canal; therefore, the analysis in this proposed IHA assumes that harbor seal, transient killer whale, harbor porpoise, and Dall's porpoise are uniformly distributed in the project area. However, it should be noted that there have been no observations of cetaceans within the floating security barriers at NBKB; these barriers thus appear to effectively prevent cetaceans from approaching the shutdown zones. Although the Navy will implement a precautionary shutdown zone for cetaceans, anecdotal evidence suggests that cetaceans are not at risk of Level A harassment at NBKB

even from louder activities (e.g., impact pile driving). The California sea lion does not appear to utilize most of Hood Canal. The sea lions appear to be attracted to the man-made haul-out opportunities along the NBKB waterfront while dispersing for foraging opportunities elsewhere in Hood Canal. California sea lions were not reported during aerial surveys of Hood Canal (Jeffries *et al.,* 2000).

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the Hood Canal. The formula was developed for calculating take due to pile driving activity and applied to each group-specific sound impact threshold. The formula is founded on the following assumptions:

- Mitigation measures (e.g., bubble curtain) would be utilized, as discussed previously;
- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period; and,
- There were will be twenty total days of activity.
- Exposures to sound levels above the relevant thresholds equate to take, as defined by the MMPA.

The calculation for marine mammal takes is estimated by:

Exposure estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI impact area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is the estimated range of impact to the sound criteria. The distances specified in Table 3 were used to calculate ZOIs around each pile. All impact pile driving take calculations were based on the estimated threshold ranges assuming attenuation of 8 dB from use of a bubble curtain. The ZOI impact area took into consideration the possible affected area of the Hood Canal from the pile driving site furthest from shore with attenuation due to land shadowing from bends in the canal. Because of the close proximity of some of the piles to the shore, the narrowness of the canal at the project area, and the maximum fetch, the ZOIs for each threshold are not necessarily spherical and may be truncated.

While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. Acoustic monitoring conducted as part of the TPP demonstrated that Level B harassment zones for vibratory pile driving are likely to be significantly smaller than the zones estimated through modeling based on measured source levels and practical spreading loss. Also of note is the fact that the effectiveness of mitigation measures in reducing takes is typically not quantified in the take estimation process. Here, we do explicitly account for an assumed level of efficacy for use of the bubble curtain, but not for the soft start associated with impact driving. In addition, equating exposure with response (i.e., a behavioral response meeting the definition of take under the MMPA) is simplistic and conservative assumption. For these reasons, these take estimates are likely to be conservative.

Airborne Sound—No incidents of incidental take resulting solely from airborne sound are likely, as distances to the harassment thresholds would not reach areas where pinnipeds may haul out. Harbor seals can haul out at a variety of natural or manmade locations, but the closest known harbor seal haul-out is at the Dosewallips River mouth (London, 2006) and Navy waterfront surveys and boat surveys have found it rare for harbor seals to haul out along the NBKB waterfront (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011; Navy, 2010). Individual seals have occasionally been observed hauled out on pontoons of the floating security fence within the restricted areas of NBKB, but this area is not with the airborne disturbance ZOI. The Service Pier is elevated at least twenty feet above the surface of the water and is inaccessible to pinnipeds, and seals have not been observed hauled out on the floating Port Operations pier sections or on the shoreline adjacent to the Service Pier. Sea lions typically haul out on submarines docked at Delta Pier, approximately one mile from the project site.

We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with heads above water. However, these animals would previously have been 'taken' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple incidents of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted.

California Sea Lion—California sea lions occur regularly in the vicinity of the project site from August through mid-June, as determined by Navy waterfront surveys conducted from April 2008 through December 2011 (Table 6). With regard to the range of this species in Hood Canal and the project area, it is assumed on the basis of waterfront observations (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011) that the opportunity to haul out on submarines docked at Delta Pier is a primary attractant for California sea lions in Hood Canal, as they are not typically observed elsewhere in Hood Canal. Their haul-out sites are not within the largest underwater ZOI, because sound would encounter land before reaching the haul-out site (see Figure 6–2 in the Navy's application). Abundance is calculated as the monthly average of the maximum number observed in a given month, as opposed to the overall average (Table 6). That is, the maximum number of animals observed on any one day in a given month was averaged for 2008–11, providing a monthly average of the maximum daily number observed. The largest monthly average (58 animals) was recorded in November, as was the largest single daily count (81 in 2011). The first California sea lion was observed at NBKB in August 2009, and their occurrence has been increasing since that time (Navy, 2012).

California sea lion density for Hood Canal was calculated to be 0.28 animals/km^2 for purposes of the Navy Marine Species Density Database (Navy, 2013). However, this density was derived by averaging data collected year-round. This project will occur during the months when California sea lions are the least abundant in Hood Canal, so it is more appropriate to use data collected at the NBKB waterfront during those months (July-September). The highest number of individual California sea lions observed hauled out at NBKB during this timeframe during this time was 33, which occurred at the end of September 2010. Exposures were calculated assuming 33 individuals could be present, and therefore exposed

to sound exceeding the behavioral harassment threshold, on each day of pile driving. This methodology is still conservative in that it uses the maximum abundance without considering the much lower observed abundances from July and August (when the majority of project activity is likely to be completed) and assumes that all individuals potentially would be taken on any given day of activity.

TABLE 6—CALIFORNIA SEA LION SIGHTING INFORMATION FROM NBKB, APRIL 2008–DECEMBER 2012

Month	Number of surveys	Number of surveys with animals present	Frequency of presence [1]	Abundance [2]
January	47	36	0.77	31.0
February	50	43	0.86	38.0
March	47	45	0.96	53.3
April	67	55	0.82	45.4
May	72	58	0.81	29.4
June	73	17	0.23	7.4
July	61	1	0.02	0.6
August	65	12	0.18	2.6
September	54	31	0.57	20.4
October	65	61	0.94	51.8
November	56	56	1	60.2
December	54	44	0.81	49.6
Total or average (in-water work period only)	180	44	0.24	7.3

Totals (number of surveys) and averages (frequency and abundance) presented for work period (July–September) only. Information from October–June presented for reference.

[1] Frequency is the number of surveys with California sea lions present/number of surveys conducted.

[2] Abundance is calculated as the monthly average of the maximum daily number observed in a given month.

Harbor Seal—Jeffries *et al.* (2003) conducted aerial surveys of the harbor seal population in Hood Canal in 1999 for the Washington Department of Fish and Wildlife and reported 711 harbor seals hauled out. The authors adjusted this abundance with a correction factor of 1.53 to account for seals in the water, which were not counted, and estimated that there were 1,088 harbor seals in Hood Canal. The correction factor (1.53) was based on the proportion of time seals spend on land versus in the water over the course of a day, and was derived by dividing one by the percentage of time harbor seals spent on land. These data came from tags (VHF transmitters) applied to harbor seals at six areas (Grays Harbor, Tillamook Bay, Umpqua River, Gertrude Island, Protection/Smith Islands, and Boundary Bay, BC) within two different harbor seal stocks (the coastal stock and the inland waters of WA stock) over four survey years. The Hood Canal population is part of the inland waters stock, and while not specifically sampled, Jeffries *et al.* (2003) found the VHF data to be broadly applicable to the entire stock. The tagging research in 1991 and 1992 conducted by Huber *et al.* (2001) and Jeffries *et al.* (2003) used the same methods for the 1999 and 2000 survey years. These surveys indicated that approximately 35 percent of harbor seals are in the water versus hauled out on a daily basis (Huber *et al.,* 2001; Jeffries *et al.,* 2003). Exposures were calculated using a density derived from the number of harbor seals that are present in the water at any one time (35 percent of 1,088, or approximately 381 individuals), divided by the area of the Hood Canal (358.44 km^2) and the formula presented previously. The aforementioned area of Hood Canal represents a change from that cited previously for authorizations associated with Navy activities in Hood Canal, and represents a correction to our understanding of the methodology used in *Jeffries et al.* (2003).

We recognize that over the course of the day, while the proportion of animals in the water may not vary significantly, different individuals may enter and exit the water. However, fine-scale data on harbor seal movements within the project area on time durations of less than a day are not available. Previous monitoring experience from Navy actions conducted from in the same project area has indicated that this density provides an appropriate estimate of potential exposures. However, the density of harbor seals calculated in this manner (1.06 animals/km^2) is corroborated by results of the Navy's vessel-based marine mammal surveys at NBKB in 2008 and 2009–10, in which an average of five individual harbor seals per survey was observed in the 3.9 km^2 survey area (density = 1.3 animals/km^2) (Tannenbaum *et al.,* 2009, 2011).

Killer Whales—Transient killer whales are uncommon visitors to Hood Canal, and may be present anytime during the year. Transient pods (six to eleven individuals per event) were observed in Hood Canal for lengthy periods of time (59–172 days) in 2003 (January-March) and 2005 (February-June), feeding on harbor seals (London, 2006). These whales used the entire expanse of Hood Canal for feeding. West Coast transient killer whales most often travel in small pods (Baird and Dill 1996). Houghton reported to the Navy, from unpublished data, that the most commonly observed group size in Puget Sound (defined as from Admiralty Inlet south and up through Skagit Bay) from 2004–2010 data is six whales.

The density value derived for the Navy Marine Species Density Database is 0.0019 animals/km^2 (Navy, 2013), which would result in a prediction that zero animals would be harassed by the project activities. However, while transient killer whales are rare in the Hood Canal, it is possible that a pod of animals could be present. In the event that this occurred, the animals would not assume a uniform distribution as is implied by the density estimate. Therefore, we conservatively assume that a single pod of whales (defined as six whales) could be present in the vicinity of the project for the entire duration.

Dall's Porpoise

Dall's porpoises may be present in the Hood Canal year-round and could occur as far south as the project site. Their use of inland Washington waters, however,

is mostly limited to the Strait of Juan de Fuca. One individual has been observed by Navy staff in deeper waters of Hood Canal (Tannenbaum *et al.,* 2009, 2011). The Navy Marine Species Density Database assumes a negligible value of 0.001 animals/1,000 km^2 for Dall's porpoises in the Hood Canal, which represents species that have historically been observed in an area but have no regular presence. Use of this density value results in a prediction that zero animals would be exposed to sound above the behavioral harassment threshold, and the Navy is not requesting any take authorization for Dall's porpoises.

Harbor Porpoise

During vessel-based line transect surveys on non-construction days during the TPP, harbor porpoises were frequently sighted within several kilometers of the base, mostly to the north or south of the project area, but occasionally directly across from the Bangor waterfront on the far side of Toandos Peninsula. Harbor porpoise presence in the immediate vicinity of the base (i.e., within 1 km) remained low. These data were used to generate a density for Hood Canal. Based on guidance from other line transect surveys conducted for harbor porpoises using similar monitoring parameters (e.g., boat speed, number of observers) (Barlow, 1988; Calambokidis *et al.,* 1993; Caretta *et al.,* 2001), the Navy determined the effective strip width for the surveys to be one kilometer, or a perpendicular distance of 500 m from the transect to the left or right of the vessel. The effective strip width was set at the distance at which the detection probability for harbor porpoises was equivalent to one, which assumes that all individuals on a transect are detected. Only sightings occurring within the effective strip width were used in the density calculation. By multiplying the trackline length of the surveys by the effective strip width, the total area surveyed during the surveys was 471.2 km^2. Thirty-eight individual harbor porpoises were sighted within this area, resulting in a density of 0.0806 animals per km^2. To account for availability bias, or the animals which are unavailable to be detected because they are submerged, the Navy utilized a g(0) value of 0.54, derived from other similar line transect surveys (Barlow, 1988; Calambokidis *et al.,* 1993; Carretta *et al.,* 2001). This resulted in a corrected density of 0.149 harbor porpoises per km^2. For comparison, 274.27 km^2 of trackline survey effort in nearby Dabob Bay produced a corrected density estimate of 0.203 harbor porpoises per km^2.

TABLE 7—NUMBER OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Density	Underwater	
		Impact injury threshold [1]	Vibratory disturbance threshold (120 dB) [2]
California sea lion	[4] 0.28	0	660
Harbor seal	1.06	0	341
Killer whale	0.0019	0	120
Dall's porpoise	0.000001	0	0
Harbor porpoise	0.149	0	40

[1] Acoustic injury threshold for impact pile driving is 190 dB for pinnipeds and 180 dB for cetaceans.
[2] Impact pile driving would always occur on the same day as vibratory pile driving, and the 160-dB acoustic harassment zone associated with impact pile driving is considered subsumed by the 120-dB harassment zone produced by vibratory driving. Therefore, takes are not calculated separately for the two zones.
[4] An maximum abundance estimate of 33 animals present per day during the project timeframe was used for take estimation.

Potential takes could occur if individuals of these species move through the area on foraging trips when pile driving is occurring. Individuals that are taken could exhibit behavioral changes such as increased swimming speeds, increased surfacing time, or decreased foraging. Most likely, individuals may move away from the sound source and be temporarily displaced from the areas of pile driving. Potential takes by disturbance would likely have a negligible short-term effect on individuals and not result in population-level impacts.

Negligible Impact and Small Numbers Analyses and Preliminary Determinations

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, we considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Pile driving activities associated with the barge mooring project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the proposed activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from airborne or underwater sounds generated from pile driving. No mortality, serious injury, or Level A harassment is anticipated given the methods of installation and measures designed to minimize the possibility of injury to marine mammals and Level B harassment would be reduced to the level of least practicable adverse impact. Specifically, vibratory hammers, which do not have significant potential to cause injury to marine mammals due to the relatively low source levels (less than 190 dB), would be the primary method of installation. Also, no impact pile driving will occur without the use of a sound attenuation system (e.g., bubble curtain), and pile driving will either not start or be halted if marine mammals approach the shutdown zone. The pile driving activities analyzed here are similar to other similar construction activities, including recent projects conducted by the Navy in the Hood Canal as well as work conducted in 2005 for the Hood Canal Bridge (SR–104) by the Washington Department of Transportation, which have taken place with no reported injuries or mortality to marine mammals.

The proposed numbers of animals authorized to be taken for California sea lions, harbor seals, and harbor porpoise would be considered small relative to the relevant stocks or populations (each less than five percent) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For transient killer whales, we estimate take based on an assumption that a single pod of whales, comprising six individuals, is present in the vicinity of the project area for the entire duration of the project. These six individuals represent a small number of transient killer whales. For pinnipeds, no rookeries are present in the project area, there are no haul-outs other than those provided opportunistically by man-made objects, and the project area is not known to provide foraging habitat of any special importance.

Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability, and thus would not result in any adverse impact to the stock as a whole in terms of adverse effects on rates of recruitment or survival. The potential for multiple exposures of a small portion of the overall stock to levels associated with Level B harassment in this area is expected to have a negligible impact on the affected stocks.

We have preliminarily determined that the impact of the previously described project may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. No mortality or injuries are anticipated as a result of the specified activity, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. For pinnipeds, the absence of any major rookeries and only a few isolated and opportunistic haul-out areas near or adjacent to the project site means that potential takes by disturbance would have an insignificant short-term effect on individuals and would not result in population-level impacts. Similarly, for cetacean species the absence of any known regular occurrence adjacent to the project site means that potential takes by disturbance would have an insignificant short-term effect on individuals and would not result in population-level impacts. Due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

For reasons stated previously in this document, the negligible impact determination is also supported by the likelihood that marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious, and the likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for Hood Canal, enabling the implementation of shutdowns to avoid injury, serious injury, or mortality. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and would be avoided through the incorporation of the proposed mitigation measures.

While the numbers of marine mammals potentially incidentally harassed would depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the numbers are estimated to be small relative to the affected species or population stock sizes, and have been mitigated to the lowest level practicable through incorporation of the proposed mitigation and monitoring measures mentioned previously in this document. This activity is expected to result in a negligible impact on the affected species or stocks. No species for which take authorization is requested are either ESA-listed or considered depleted under the MMPA. No take would be authorized for humpback whales, Steller sea lions, southern resident killer whales, or Dall's porpoises, and the Navy would take appropriate action to avoid unauthorized incidental take should one of these species be observed in the project area.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that the proposed barge mooring project would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the activity would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

No tribal subsistence hunts are held in the vicinity of the project area; thus, temporary behavioral impacts to individual animals will not affect any subsistence activity. Further, no population or stock level impacts to marine mammals are anticipated or authorized. As a result, no impacts to the availability of the species or stock to the Pacific Northwest treaty tribes are expected as a result of the activities. Therefore, no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act (ESA)

There are no ESA-listed marine mammals expected to occur in the action area during the proposed action timeframe; therefore, no consultation under the ESA is required for such species.

National Environmental Policy Act (NEPA)

The Navy has prepared a draft EA, which has been posted on the NMFS Web site (see **ADDRESSES**) concurrently with the publication of this proposed IHA and public comments have been solicited. We will review the draft EA and the public comments received and subsequently either adopt it or prepare our own NEPA document before making a determination on the issuance of an IHA.

Proposed Authorization

As a result of these preliminary determinations, we propose to authorize the take of marine mammals incidental to the Navy's barge mooring project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 17, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–12151 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–22–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: Grace Period Study.

Form Number(s): None.

Agency Approval Number: 0651–00xx.

Type of Request: New information collection.

Burden: 71 hours annually.

Number of Respondents: 420 responses per year. Out of a sample size of 3,000, the USPTO estimates that 420 completed surveys will be received, for a response rate of 14%. The USPTO estimates that none of these surveys will be submitted by small entities.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to complete this survey. This estimated time includes reading the instructions for the survey, gathering the necessary information, completing the survey, and submitting it to the USPTO.

Needs and Uses: The Grace Period Study survey is used by foreign governments, researchers, and other stakeholders to evaluate the effects of premature disclosure of patentable inventions or ideas on researchers' failures to apply for or receive patents. The USPTO will use the survey to gather data to estimate the value of lost commercial opportunities in Europe due to the lack of adequate patent grace periods in many European countries.

Affected Public: Businesses or other for-profits and non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov.*

Paper copies can be obtained by:

• Email: *InformationCollection@uspto.gov.* Include ''0651–00xx Grace Period Study copy request'' in the subject line of the message.

• 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 June 21, 2013 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: May 17, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–12135 Filed 5–21–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 12–73–NG, 12–161–LNG, 13–12–NG, 13–18–NG, 13–20–NG, 13–25–NG, 13–04–LNG, 13–06–LNG, 11–38–NG, 13–15–NG, 13–27–NG, 13–29–NG, 13–31–NG, 13–33–NG, 13–34–NG, 13–36–NG, 13–37–NG, 13–24–NG, 13–28–LNG, and 13–32–LNG]

Constellation Energy Commoditiesgroup, Inc., ENI USA Gas Marketing LLC, Sequent Energy Canada Corp., Alpha Gas and Electric, LLC, H.Q. Energy Services (U.S.) Inc. Nextera Energy Power Marketing, LLC, Trunkline LNG Export, LLC, Gasfin Development USA LLC, Louis Dreyfus Energy Services L.P. Fortisbc Energy Inc., Gazprom Marketing & Trading USA, Inc., Liquiline LNG Solutions Corporation, El Paso Marketing Company, L.L.C., Superior Plus Energy Services Inc., Maritimes & Northeast Pipeline, L.L.C., St. Lawrence Gas Company, Inc., Ecogas Mexico S. de R.L. de C.V., Citigroup Energy Canada ULC, Gulf LNG Energy, L.L.C., and, Logistic Energy and PetroleumServices Inc.; Orders Granting Authority To Import and Export Natural Gas, To Import Liquefied Natural Gas, To Export Liquefied Natural Gas, and Vacating Prior Authority During March 2013

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during March 2013, it issued orders granting authority to import and export natural gas and liquefied natural gas and vacating prior authority. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2012.html.* They are also available for inspection and copying in the Office of Fossil Energy, Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 6, 2013.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Appendix

DOE/FE Orders Granting Import/Export Authorizations

Order No.	Date issued	FE Docket No.	Authorization holder	Description of action
3137–A	03/05/13	12–73–NG ...	Constellation Energy Commodities Group, Inc.	Order vacating blanket authority to import/export natural gas from/to Canada.
3247	03/05/13	12–161–LNG	ENI USA Gas Marketing LLC.	Order granting blanket authority to export previously imported LNG by vessel.
3248	03/05/13	13–12–NG ...	Sequent Energy Canada Corp.	Order granting blanket authority to import/export natural gas from/to Canada.
3249	03/05/13	13–18–NG ...	Alpha Gas and Electric LLC.	Order granting blanket authority to import/export natural gas from/to Canada, to import LNG from Canada by truck, to export LNG to Canada by vessel, to export LNG to Canada by truck, and to import LNG from various international sources by vessel.
3250	03/05/13	13–20–NG ...	H.Q.Energy Services (U.S.) Inc.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.

Order No.	Date issued	FE Docket No.	Authorization holder	Description of action
3251	03/05/13	13–25–NG ...	NextEra Energy Power Marketing, LLC.	Order granting blanket authority to import/export natural gas from/to Canada.
3252	03/07/13	13–04–LNG	Trunkline LNG Export, LLC.	Order granting long-term multi-contract authority to export LNG by vessel from the Lake Charles LNG Terminal to Free Trade Agreement nations.
3253	03/07/13	13–06–LNG	Gasfin Development USA, LLC.	Order granting long-term multi-contract authority to export LNG by vessel from the proposed Gasfin LNG Export Project in Parish, Louisiana, to Free Trade Agreement nations.
2940–A	03/15/13	11–38–NG ...	Louis Dreyfus Energy Services L.P.	Order vacating blanket authority to import/export natural gas from/to Canada/Mexico.
3254	03/15/13	13–15–NG ...	FortisBC Energy Inc	Order granting blanket authority to import/export natural gas from/to Canada, and to import/export LNG from/to Canada by truck.
3255	03/15/13	13–27–NG ...	Gazprom Marketing & Trading USA, Inc.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico and to import LNG from various international sources by vessel.
3256	03/15/13	13–29–NG ...	Liquiline LNG Solutions Corporation.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico, to import LNG from Canada/Mexico by truck, to export LNG to Canada/Mexico by vessel, and to import LNG from various international sources by vessel.
3257	03/15/13	13–31–NG ...	El Paso Marketing Company, L.L.C.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3258	03/15/13	13–33–NG ...	Superior Plus Energy Services Inc.	Order granting blanket authority to import natural gas from Canada.
3259	03/15/13	13–34–NG ...	Maritimes & Northeast Pipeline, L.L.C.	Order granting blanket authority to import/export natural gas from/to Canada.
3260	03/22/13	13–36–NG ...	St. Lawrence Gas Company, Inc.	Order granting blanket authority to export natural gas to Canada.
3261	03/22/13	13–37–NG ...	Ecogas Mexico S. de R.L. de C.V.	Order granting blanket authority to import natural gas from Canada and to export natural gas to Mexico.
3262	03/26/13	13–24–NG ...	Citigroup Energy Canada ULC.	Order granting blanket authority to import/export natural gas from/to Canada.
3263	03/26/13	13–28–LNG	Gulf LNG Energy, L.L.C.	Order granting blanket authority to import LNG from various international sources by vessel.
3264	03/26/13	13–32–LNG	Logistic Energy and Petroleum Services Inc.	Order granting blanket authority to import LNG from various international sources by vessel.

[FR Doc. 2013–12192 Filed 5–21–13; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG), plus two point six five percent (PPI–FG + 2.65). The Commission determined in an ''Order Establishing Index For Oil Price Change Ceiling Levels'' issued December 16, 2010, that PPI–FG + 2.65 is the appropriate oil pricing index factor for pipelines to use for the five-year period commencing July 1, 2011.[1]

The regulations provide that the Commission will publish annually, an index figure reflecting the final change in the PPI–FG, after the Bureau of Labor Statistics publishes the final PPI–FG in May of each calendar year. The annual average PPI–FG index figures were 190.5 for 2011 and 194.2 for 2012.[2] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2011 to 2012, plus 2.65 percent, is positive 0.045923.[3] Oil pipelines must multiply their July 1, 2012, through June 30, 2013, index ceiling levels by positive 1.045923[4] to compute their index ceiling levels for July 1, 2013, through June 30, 2014, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12 month period beginning January 1, l995,[5] *see Explorer Pipeline Company,* 71 FERC ¶ 61,416 at n.6 (1995).

In addition to publishing the full text of this Notice in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print this Notice via the Internet through FERC's Home Page *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426. The full text of this Notice is available on FERC's Home Page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of

[1] 133 FERC ¶ 61,228 at P 1 (2010).

[2] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at 202–691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the Internet at *http://www.bls.gov/ppi/home.htm.* To obtain the BLS data, scroll down to ''PPI Databases'' and click on ''Top Picks'' of the Commodity Data including stage-of-processing indexes (Producer Price Index—PPI). At the next screen, under the heading ''Producer Price Index Commodity Data,'' select the first box, ''Finished goods—WPUSOP3000,'' then scroll all the way to the bottom of this screen and click on Retrieve data.

[3] [194.2 − 190.5]/190.5 = 0.019423 + 0.0265 = 0.045923.

[4] 1 + 0.045923 = 1.045923.

[5] For a listing of all prior multipliers issued by the Commission, see the Commission's Web site, *http://www.ferc.gov/industries/oil/gen-info/pipeline-index.asp.*

this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (email at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659. EMail the Public Reference Room at *public.referenceroom@ferc.gov.*

Dated: May 15, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–12128 Filed 5–21–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–139]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2146–139.

c. *Date Filed:* March 19, 2013.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Hydroelectric Project.

f. *Location:* Lake Logan Martin in Talladega County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Amy Stewart, Alabama Power Company, 600 18th Street North, Birmingham, AL, 35203–8180, (205) 257–1000.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 14, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2146–139) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Alabama Power Company (licensee) requests Commission approval to permit existing and proposed facilities associated with a recreational vehicle (RV) park operated by Clear Creek Cove, LLC (permittee) on Lake Logan Martin. The RV park consists of approximately 15.5 acres of land owned by the permittee, 6.7 acres of which is located inside the project boundary on lands over which the licensee holds flowage rights. The licensee previously permitted the construction of 5 docks with associated concrete access pads and a playground inside the project boundary. Inside the project boundary, the permittee also has constructed 11 RV pads with utility connections (81 additional pads are located outside of the project boundary), a swimming beach, and portions of an on-site sewage disposal system. The licensee proposes to permit the above improvements, as well as allow the permittee to make the following additional improvements: (1) Install four boat docks measuring 8 feet by 150 feet; (2) re-configure an existing boat dock; (3) re-purpose an existing boat dock into a floating pavilion; (4) install a boat ramp; (5) construct a parking area and access road; (6) install two additional covered pavilions and a playground on land; and (7) install a walking and cart path. After the proposed improvements, the RV park could accommodate a total of 88 watercraft.

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 excluding the last three digits in the docket number field (P–2146) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *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, respectively. 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. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 15, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–12126 Filed 5–21–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–177]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 349–177.

c. *Date Filed:* April 2, 2013.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* Lake Martin in Tallapoosa County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Amy Stewart, Alabama Power Company, 600 18th Street North, Birmingham, AL, 35203–8180, (205) 257–1000.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 14, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–349–177) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Alabama Power Company requests Commission approval to permit The Village, LLC (permittee) to construct certain non-project uses of project lands and waters associated with a residential development at Lake Martin. The proposal would allow the permittee to construct a vehicular bridge, 776 feet of seawall around the island, and three multi-slip boat docks to accommodate 42 watercraft. Approximately 290 feet of riprap and 158 feet of natural swimming beach currently exist along the island's shoreline, and would not be affected by the proposal. To mitigate for the construction of the seawall and bridge abutments, the permittee would be required to develop an additional mitigation plan and install 20 shallow-water fish spawning structures in consultation with the Alabama Department of Conservation and Natural Resources. The vehicular bridge would allow the permittee to construct portions of a residential development on the island, which is owned by the permittee and located outside of the project boundary. The proposed boat docks would serve residents of the development whose lots are located on the island as well as off-water lots.

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 excluding the last three digits in the docket number field (P–349) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *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, respectively. 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. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 15, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–12129 Filed 5–21–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1069–003.

Applicants: MP2 Energy LLC.

Description: Amendment to be effective 5/15/2013.

Filed Date: 5/14/13.

Accession Number: 20130514–5082.

Comments Due: 5 p.m. ET 6/4/13.

Docket Numbers: ER13–1484–000.

Applicants: PJM Interconnection, L.L.C.

Description: Queue Position #X4–023—Original Service Agreement No. 3555 to be effective 4/11/2013.

Filed Date: 5/13/13.

Accession Number: 20130513–5203.

Comments Due: 5 p.m. ET 6/3/13.

Docket Numbers: ER13–1485–000.

Applicants: Wheelabrator Baltimore, L.P.

Description: Market-Based Rate Tariff Application to be effective 7/1/2013.

Filed Date: 5/13/13.

Accession Number: 20130513–5246.

Comments Due: 5 p.m. ET 6/3/13.

Docket Numbers: ER13–1486–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 2013–05–14_SMMPA Byron TR9 Replcmnt Agrmt-554 to be effective 4/10/2013.

Filed Date: 5/14/13.

Accession Number: 20130514–5016.

Comments Due: 5 p.m. ET 6/4/13.

Docket Numbers: ER13–1487–000.

Applicants: Quantum Auburndale Power, LP.

Description: Quantum Auburndale Power, LP—initial baseline filing to be effective 5/14/2013.

Filed Date: 5/14/13.

Accession Number: 20130514–5017.

Comments Due: 5 p.m. ET 6/4/13.

Docket Numbers: ER13–1488–000.

Applicants: Quantum Pasco Power, LP.

Description: Quantum Pasco Power, LP—initial baseline filing to be effective 5/14/2013.

Filed Date: 5/14/13.

Accession Number: 20130514–5019.

Comments Due: 5 p.m. ET 6/4/13.

Docket Numbers: ER13–1489–000.

Applicants: Quantum Lake Power, LP.

Description: Quantum Lake Power, LP Market-Based Rates Tariff to be effective 5/14/2013.

Filed Date: 5/14/13.

Accession Number: 20130514–5020.

Comments Due: 5 p.m. ET 6/4/13.

Docket Numbers: ER13–1490–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 2013–05–14_SMMPA Byron CapX Agrmt-553 to be effective 4/10/2013.

Filed Date: 5/14/13.

Accession Number: 20130514–5029.

Comments Due: 5 p.m. ET 6/4/13.

Docket Numbers: ER13–1491–000.

Applicants: GDF SUEZ Energy Marketing NA, Inc.

Description: GDF SUEZ Energy Marketing NA, Inc's requests a one-time, limited waiver of the procedural deadlines set forth in Section 5.14(h)(8) of the Reliability Pricing Model rules of PJM Interconnection, L.L.C.

Filed Date: 5/14/13.

Accession Number: 20130514–4001.

Comments Due: 5 p.m. ET 5/21/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 14, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–12132 Filed 5–21–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–106–000.

Applicants: Wapsipinicon Wind Project, LLC.

Description: Application for Approval under Section 203 of the Federal Power Act and Requests for Expedited Consideration and Confidential Treatment of Wapsipinicon Wind Project, LLC.

Filed Date: 5/15/13.

Accession Number: 20130515–5084.

Comments Due: 5 p.m. ET 6/5/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3168–005; ER10–3125–006; ER10–3102–006 ER10–3100–006; ER10–3143–005; ER10–3107–006 ER10–3109–006.

Applicants: ArcLight Energy Marketing, LLC, AL Sandersville, LLC, Effingham County Power, LLC, MPC Generating, LLC, Sabine Cogen, LP, Walton County Power, LLC, Washington County Power, LLC.

Description: Notice of Non-Material Change in Status of ArcLight Energy Marketing, LLC, et al.

Filed Date: 5/15/13.

Accession Number: 20130515–5087.

Comments Due: 5 p.m. ET 6/5/13.

Docket Numbers: ER11–2780–013.

Applicants: Safe Harbor Water Power Corporation.

Description: Safe Harbor Water Power Corporation Notice of Change in Status.

Filed Date: 5/15/13.

Accession Number: 20130515–5083.

Comments Due: 5 p.m. ET 6/5/13.

Docket Numbers: ER13–1017–000.

Applicants: Consumers Energy Company, CMS Energy Resource Management Company.

Description: Consumers Energy Company and CMS Energy Resource Management Company's Amendment to March 1, 2013 Application of the for Waiver of Affiliate Restrictions Related to the 2016 Planning Year Auction for Capacity.

Filed Date: 5/14/13.

Accession Number: 20130514–5141.

Comments Due: 5 p.m. ET 5/28/13.

Docket Numbers: ER13–1258–002.

Applicants: Land O'Lakes, Inc.

Description: Inquiry Response to be effective 6/14/2013.

Filed Date: 5/15/13.

Accession Number: 20130515–5000.

Comments Due: 5 p.m. ET 6/5/13.

Docket Numbers: ER13–1378–002.

Applicants: Southwest Power Pool, Inc.

Description: Amendment—Docket ER13–1378—City of Coffeyville. Stated Rate to be effective 7/1/2013.

Filed Date: 5/15/13.

Accession Number: 20130515–5067.

Comments Due: 5 p.m. ET 6/5/13.

Docket Numbers: ER13–1492–000.

Applicants: Pacific Gas and Electric Company.

Description: Sacramento Municipal Utility District Fringe Area Service Agreement to be effective 7/1/2013.

Filed Date: 5/15/13.

Accession Number: 20130515–5001.

Comments Due: 5 p.m. ET 6/5/13.

Docket Numbers: ER13–1493–000.

Applicants: Public Service Company of New Mexico.

Description: Modification to OATT Section 2.2 to be effective 7/15/2013.

Filed Date: 5/15/13.

Accession Number: 20130515–5058.

Comments Due: 5 p.m. ET 6/5/13.

Docket Numbers: ER13–1494–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 05–15–2013 SA 2521 ITC & Tuscola Wind GIA to be effective 5/16/2013.

Filed Date: 5/15/13.
Accession Number: 20130515–5091.
Comments Due: 5 p.m. ET 6/5/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–24–000.
Applicants: Upper Peninsula Power Company.
Description: Application for Authorization to Issue Securities Under Section 204 of the Federal Power Act of Upper Peninsula Power Company.
Filed Date: 5/15/13.
Accession Number: 20130515–5102.
Comments Due: 5 p.m. ET 6/5/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 15, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–12138 Filed 5–21–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–20–000]

Enterprise TE Products Pipeline Company LLC; Notice of Petition for Declaratory Order

Take notice that on May 14, 2013, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Enterprise TE Products Pipeline Company LLC filed a petition seeking a declaratory order approving priority service, the tariff rate structure, and service request allocation methodology for its proposed Seymour Lateral Extension Project, as more fully described in its petition.

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 5 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 7, 2013.

Dated: May 15, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–12127 Filed 5–21–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0050, FRL–9816–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Implementation of Ambient Air Protocol Gas Verification Participation Survey; EPA ICR No. 2375.02

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the EPA is planning to submit a request for a renewal Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to the OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0050, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* 202–566–9744
- *Mail:* Docket No. EPA–HQ–OAR–2010–0050, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2010–0050, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0050. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Mrs. Laurie Trinca, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–06, Research Triangle Park, NC 27711; telephone: 919–541–0520; fax: 919–541–1903; email: *trinca.laurie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2010–0050 which is available for on-line viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is the EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, the EPA is requesting comments from small businesses (especially those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

(i) Explain your views as clearly as possible and provide specific examples.

(ii) Describe any assumptions that you used.

(iii) Provide copies of any technical information and/or data you used that support your views.

(iv) If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

(v) Offer alternative ways to improve the collection activity.

(vi) Make sure to submit your comments by the deadline identified under **DATES**.

(vii) To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are state, local, and tribal governments that are currently operating and maintaining established ambient air quality networks.

Title: Implementation of Ambient Air Protocol Gas Verification Participation Survey.

ICR numbers: EPA ICR No. EPA–HQ–OAR–2010–0050, OMB Control No. 2060–0648.

ICR status: This ICR is for a renewal information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR includes ambient air monitoring data reporting and recordkeeping activities associated with the 40 CFR part 58 Appendix A, Ambient Air Quality Surveillance Quality Assurance Regulations. These data and information are collected by state, local, and tribal air quality management agencies and reported to the EPA.

The EPA Ambient Air Quality Monitoring Program's quality assurance requirements in 40 CFR part 58, Appendix A, require: ''2.6 Gaseous and Flow Rate Audit Standards. Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentrations for CO, SO_2, NO, and NO_2 must be traceable to either a National Institute of Standards and Technology (NIST) Traceable Reference Material (NTRM), NIST Standard Reference Materials (SRM), and Netherlands Measurement Institute (NMI) Primary Reference Materials (valid as covered by Joint Declaration of Equivalence) or a NIST-certified Gas Manufacturer's Internal Standard (GMIS), certified in accordance with one of the procedures given in reference 4 of this appendix. Vendors advertising certification with the procedures provided in reference 4 of this appendix and distributing gases as ''EPA Protocol Gas'' must participate in the EPA Protocol Gas Verification Program or not use ''EPA'' in any form of advertising.''

These requirements give assurance to end users that all specialty gas producers selling EPA Protocol Gases are participants in a program that provides an independent assessment of the accuracy of their gases' certified concentrations. In 2010, the EPA developed an Ambient Air Protocol Gas Verification Program (AA–PGVP) that provides end users with information about participating producers and verification results.

Each year, the EPA will attempt to compare gas cylinders from every specialty gas producer being used by ambient air monitoring organizations. The EPA's Regions 2 and 7 have agreed to provide analytical services for verification of 40 cylinders/lab or 80 cylinders total/year. Cylinders will be

verified at a pre-determined time each quarter.

In order to make the appropriate selection, the EPA needs to know what specialty gas producers are being used by the monitoring organizations. Therefore, the EPA needs to survey each primary quality assurance organization every year to collect information on specialty gas producers being used and whether the monitoring organization would like to participate in the verification for the upcoming calendar year.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 minutes per response with a cost of $22.15 per year. The total number of respondents is assumed to be 211.

The ICR provides a detailed explanation of the agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 211.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 70.3.

Estimated total annual costs: $4674.00.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 16, 2013.

Mary E. Henigin,

Acting Director, Air Quality Assessment Division.

[FR Doc. 2013–12229 Filed 5–21–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011707–010.

Title: Gulf/South America Discussion Agreement.

Parties: Industrial Maritime Carriers LLC; Seaboard Marine, Ltd.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment deletes Peru from the geographic scope of the agreement.

Agreement No.: 011885–003.

Title: CMA CGM/MSC Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM S.A. and Mediterranean Shipping Company S.A.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment increases the size of the vessels operated under the agreement, and removes Indonesia from the geographic scope of the agreement.

By Order of the Federal Maritime Commission.

Dated: May 17, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–12209 Filed 5–21–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Peoples State Bancorp, Inc.,* Munising, Michigan, proposes to acquire indirectly (through its wholly-owned subsidiary Peoples State Bank of Munising, Munising, Michigan), 50 percent of the voting equity of LDC Acquisition, LLC, Marquette, Michigan, which proposes to purchase all of the outstanding capital stock of Lasco Development Corporation, Marquette, Michigan, and thereby engage in data processing activities pursuant to section 225.28(b)(14) of Regulation Y.

2. *Northern Michigan Corporation,* Escanaba, Michigan, proposes to indirectly acquire (through Northern Michigan Service Corporation, Escanaba, Michigan, a wholly-owned subsidiary of Northern Michigan Bank & Trust, Escanaba, Michigan, which is a wholly-owned subsidiary of notificant) 50 percent of the voting equity of LDC Acquisition, LLC, Marquette, Michigan, a Michigan limited liability company, which proposes to purchase all of the outstanding capital stock of Lasco Development Corporation, Marquette,

Michigan, and thereby engage in data processing pursuant to section 225.28(b)(14)

Board of Governors of the Federal Reserve System, May 17, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–12170 Filed 5–21–13; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0278; Docket 2012–0001; Sequence 19]

National Contact Center; Submission for OMB Review; National Contact Center Customer Evaluation Survey

AGENCY: Contact Center Services, Federal Citizen Information Center, Office of Citizen Services and Innovative Technologies, General Services Administration.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the National Contact Center customer evaluation surveys. In this request, the previously approved surveys have been supplemented with surveys that will temporarily replace those existing surveys for one period of several months. These temporary surveys will allow the National Contact Center to compare its customer service levels to those of private industry contact centers. A notice was published in the **Federal Register** at 78 FR 14549, on March 6, 2013. No comments were received.

DATES: *Submit comments on or before:* June 21, 2013.

FOR FURTHER INFORMATION CONTACT: Tonya Beres, Federal Information Specialist, Office of Citizen Services and Communications, at telephone (202) 501–1803 or via email to *tonya.beres@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0278, National Contact Center Evaluation Survey, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0278, National Contract Center Evaluation Survey''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0278, National Contract Center Evaluation Survey'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0278, National Contract Center Evaluation Survey.

Instructions: Please submit comments only and cite Information Collection 3090–0278, National Contract Center Evaluation Survey, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection will be used to assess the public's satisfaction with the National Contact Center service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts.

Public comments are particularly invited on: Whether this collection of information is necessary 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 to enhance the quality, utility, and clarity of the information to be collected.

B. Annual Reporting Burden

Temporary Telephone survey (One year only):

Respondents: 300.
Responses per Respondent: 1.
Annual Responses: 300.
Hours Per Response: 0.116.
Total Burden Hours: 35.

Permanent Telephone Survey:

Respondents (Year one): 900.
Respondents (subsequent years): 1000.
Responses per Respondent: 1.
Annual Responses (year one): 900.
Annual Responses (subsequent years): 1000.
Hours per Response: 0.033.
Total Burden Hours (year one): 30.
Total Burden Hours (subsequent years): 33.33.

Temporary Email survey (One year only):

Respondents: 600.
Responses per Respondent: 1.
Annual Responses: 600.
Hours per Response: 0.0833.
Total Burden Hours: 50.

Permanent Email Survey:

Respondents (Year one): 960.
Respondents (subsequent years): 1560.
Responses per Respondent: 1.
Annual Responses (year one): 960.
Annual Responses (subsequent years): 1560.
Hours per Response: 0.05.
Total Burden Hours (year one): 48.
Total Burden Hours (subsequent years): 78.

Temporary Web Chat survey (One year only):

Respondents: 400.
Responses per Respondent: 1.
Annual Responses: 400.
Hours per Response: 0.0833.
Total Burden Hours: 33.33.

PERMANENT WEB CHAT SURVEY:

Respondents (Year one): 440.
Respondents (subsequent years): 840.
Responses per Respondent: 1.
Annual Responses (year one): 440.
Annual Responses (subsequent years): 840.
Hours per Response: 0.05.
Total Burden Hours (year one): 22.
Total Burden Hours (subsequent years): 42.
Total Annual Respondents (year one): 3600.
Total Annual Respondents (year one).
Total Burden Hours (Combined, Year One): 218.
Total Burden Hours (Combined, Subsequent Years): 153.33.

Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0278, National Contact Center Customer Evaluation Survey, in all correspondence.

Dated: May 15, 2013.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2013–12107 Filed 5–21–13; 8:45 am]

BILLING CODE 6820–CX–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2013–0077; Sequence 10; OMB Control No. 9000–0096]

Federal Acquisition Regulation; Information Collection; Patents

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning patents.

DATES: Submit comments on or before July 22, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0096, Patents, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0096, Patents''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0096, Patents'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0096, Patents.

Instructions: Please submit comments only and cite Information Collection 9000–0096, Patents, in all correspondence related to this collection. Submit cooments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, Governmentwide Acquisition Policy Division, GSA (202) 501–0136 or email *marissa.petrusek@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract (sections 27.202–1 and 52.227–2).

The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (sections 27.202–5, 52.227–6, and 52.227–9).

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

B. Annual Reporting Burden

The information collection requirement in the FAR remains unchanged for the estimated number of respondents and responses received annually. There is no centralized database in the Federal Government that maintains information regarding notice or claim of patent or copyright infringement, when a response to a solicitation contains costs or charges to royalties or when a contractor submits a statement of royalties paid or required to be paid. Subject matter experts in intellectual property law were consulted to obtain additional information that could result in revised estimates for the public burden. These inquiries yielded no additional information in regards to the respondents or responses on a yearly basis. No public comments were received in prior years that have challenged the validity of the Government's estimates.

Number of Respondents: 30.

Responses Per Respondent: 1.

Total Responses: 30.

Average Burden Hours per Response: .5.

Total Burden Hours: 15.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: May 16, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–12130 Filed 5–21–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 36; OMB Control No. 9000–0147]

Federal Acquisition Regulation; Submission for OMB Review; Pollution Prevention and Right-to-Know Information (FAR 52.223–5)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning pollution prevention and right-to-know information. A notice was published in the **Federal Register** at 77 FR 63803, on October 17, 2012. No comments were received.

DATES: Submit comments on or before June 21, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001. ATTN: Hada Flowers/IC 9000–0147, Pollution Prevention and Right-to-Know Information.

Instructions: Please submit comments only and cite Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Marissa Petrusek, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–0136 or email *marissa.petrusek@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

As implemented in Federal Acquisition Regulation (FAR) Subpart 23.10, Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, signed on October 5, 2009 (74 FR 52117, October 8, 2009) and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, signed on January 24, 2007 (72 FR 3919, January 26, 2007), mandates compliance with right-to-know laws and pollution prevention requirements; implementation of an Environmental Management System (EMSs); and completion of Facility Compliance Audits (FCAs).

This information collection will be accomplished by means of FAR clause 52.223–5. This clause requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act (PPA) of 1990 (42 U.S.C. 13101–13109) and the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 (42 U.S.C. 11001–11050). Additionally, this clause requires contractors to provide information necessary so that agencies can implement EMSs and complete FCAs at certain Federal facilities.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

B. Annual Reporting Burden

The estimated annual reporting burden is slightly decreased since it was originally published in the **Federal Register** at 74 FR 48745, on September 24, 2009. The adjustment is made based on current data and consultation with Federal Government subject matter experts familiar with the requirements under this information collection.

Number of Respondents: 5,401.

Responses per Respondent: 1.

Total Annual Responses: 5,401.

Hours per Response: 3.7493.

Estimated Total Burden Hours: 20,250.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001, telephone (202) 501–4755. Please cite OMB Control Number 9000–0147, Pollution Prevention and Right-to-Know Information, in all correspondence.

Dated: May 16, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–12196 Filed 5–21–13; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–MK–2013–03; Docket No. 2013–0002; Sequence 16]

The President's Management Advisory Board (PMAB); Public Advisory Meeting

AGENCY: Office of Executive Councils, U.S. General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The President's Management Advisory Board (PMAB), a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App., and Executive Order 13538, will hold a public meeting on Friday, June 7, 2013.

DATES: The meeting will be held on Friday, June 7, 2013, beginning at 9 a.m. eastern time, ending no later than 1:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Winslow, Designated Federal Officer, President's Management Advisory Board, Office of Executive Councils, General Services Administration, 1776 G Street NW., Washington, DC 20006, at *scott.winslow@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The PMAB was established to provide independent advice and recommendations to the President and the President's Management Council on a wide range of issues related to the development of effective strategies for the implementation of best business practices to improve Federal Government management and operation.

Agenda: The main purpose for this meeting is for the PMAB to discuss the areas of work and focus for 2013 which include Management Innovation and Optimizing Federal Real Estate. In addition, the PMAB will hear reports from federal agency executives detailing the progress being made in adopting and implementing the Board's previous recommendations on the following: Improving Strategic Sourcing; Curbing Improper Payments. More detailed information on these PMAB recommendations can be found on the PMAB Web site (see below).

Meeting Access: The PMAB will convene its meeting in the Eisenhower Executive Office Building, 1650 Pennsylvania Avenue NW., Washington, DC. Due to security, there will be no public admittance to the Eisenhower Building to attend the meeting. However, the meeting is open to the

public; interested members of the public may view the PMAB's discussion at *http://www.whitehouse.gov/live.* Members of the public wishing to comment on the discussion or topics outlined in the Agenda should follow the steps detailed in Procedures for Providing Public Comments below.

Availability of Materials for the Meeting: Please see the PMAB Web site (*http://www.whitehouse.gov/administration/advisory-boards/pmab*) for any materials available in advance of the meeting and for meeting minutes that will be made available after the meeting. Detailed meeting minutes will be posted within 90 days of the meeting.

Procedures for Providing Public Comments: In general, public statements will be posted on the PMAB Web site (see above). Non-electronic documents will be made available for public inspection and copying in PMAB offices at GSA, Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect statements by telephoning 202–208–2387. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Any statements submitted in connection with the PMAB meeting will be made available to the public under the provisions of the Federal Advisory Committee Act.

The public is invited to submit written statements for this meeting until 12:30 p.m. eastern time on Thursday, June 6, 2013, by either of the following methods: *Electronic or Paper Statements:* Submit electronic statements to Mr. Winslow, Designated Federal Officer at *scott.winslow@gsa.gov;* or send paper statements in triplicate to Mr. Winslow at the PMAB GSA address above.

Dated: May 20, 2013.

Stephen Brockelman,

Director, Office of Executive Councils, General Services Administration.

[FR Doc. 2013–12262 Filed 5–21–13; 8:45 am]

BILLING CODE 6820–BR–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Partnerships To Advance the National Occupational Research Agenda (NORA)

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: ''Partnerships to Advance the National Occupational Research Agenda (NORA)''.

Public Meeting Time and Date: 1 p.m.–3 p.m. EDT, June 20, 2013.

Place: Patriots Plaza, 395 E Street SW., Derek Dunn Conference Room (9250), Washington, DC 20201.

Purpose of the Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the Internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA and on plans for evaluating the second decade of NORA. Brief written updates will be available from approximately half of the NORA Sector Councils on their progress, priorities, and implementation plans to date, likely including the NORA Construction; Manufacturing; Public Safety; Services and Wholesale and Retail Trade Councils. There will be time to ask questions and discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity 20). Everyone is encouraged to participate through the Internet (to see the slides) and a teleconference call (capacity 50). Each participant is requested to register for the free meeting by sending an email to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact telephone number on the day of the meeting, and preference for participation in-person or by Web meeting (requirements include: computer, Internet connection, and telephone, preferably with 'mute' capability). An email confirming registration will include the details needed to participate in the Web meeting. Non-US citizens are encouraged to participate in the Web meeting. Non-US citizens who do not register to attend in person on or before June 3, 2013, will not be granted access to the meeting site and will not be able to attend the meeting in-person due to mandatory security clearance procedures at the Patriots Plaza facility.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html.*

Since 2006, NORA has been structured according to industrial sectors. Ten major sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the Web and town hall meetings, ten NORA Sector Councils defined sector-specific strategic plans for conducting research and moving the results into widespread practice. To view the National Sector Agendas, see *http://www.cdc.gov/niosh/nora/.*

FOR FURTHER INFORMATION CONTACT: Sidney C. Soderholm, Ph.D., NORA Coordinator, Email *noracoordinator@cdc.gov,* telephone (202) 245–0665.

Dated: May 13, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2013–12158 Filed 5–21–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 78 FR 25743–25746, dated May 2, 2013) is amended to reflect the reorganization of the National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the Office of the Associate Director for Science (CVJ12), as follows:

Office of the Associate Director for Science (CVJ12). (1) Ensures process consistency for science across the CIOs; (2) facilitates cross-center decision-making regarding science; (3) facilitates communication regarding scientific and programmatic services across the Office of Infectious Diseases (OID); (4) conducts necessary regulatory and ethical reviews for activities involving human participants, including determining whether an activity includes research, includes human subjects, is exempt or requires Institutional Review Board approval, and whether an exception is needed to the Public Health Service HIV policy; (5) reviews funded activities for application of human research regulations; (6) reviews, approves, and tracks research protocols, clinical investigations, and the Food and Drug Administration regulated response activities intended for submission to CDC Human Research Protections Office; (7) coordinates and tracks Office of Management and Budget clearance under the Paperwork Reduction Act; (8) serves as the focal point for the OID for implementing policies and guidelines for the conduct of the peer review of infectious disease extramural research grant proposals and subsequent grant administration; (9) coordinates and conducts in-depth external peer review, objective review including special emphasis panel (SEP) process, and secondary program relevance review of extramural research applications by use of consultant expert panels; (10) makes recommendations to the appropriate infectious disease center director on award selections and staff members serve as the program officials in conjunction with CDC grants management and policy officials to implement and monitor the scientific, technical, and administrative aspects of awards; (11) facilitates scientific collaborations between external and internal investigators; and (12) disseminates and evaluates extramural research progress, findings, and impact.

Delete in its entirety the title and functional statement for the Extramural Research Program Office (CVJ14).

Revise the functional statement for the Office of Management and Program Support (CVJ15), as follows:

Office of Management and Program Support (CVJ15). (1) Helps implement and enforce management and operations policies and guidelines developed by federal agencies, DHHS, and Staff Service Offices (SSO); (2) plans, develops, implements, and provides oversight and quality control for center-wide policies, procedures, and practices for administrative management and acquisition and assistance mechanisms, including contracts, memoranda of agreement, and cooperative agreements; (3) provides management and coordination of NCHHSTP-occupied space and facilities; (4) supplies technical guidance and expertise regarding occupancy and facilities management to emergency situations; (5) provides oversight and management of the distribution, accountability, and maintenance of CDC property and equipment; (6) provides oversight, quality control, and management of NCHHSTP records; (7) serves as lead and primary contact and liaison with relevant SSO on all matters pertaining to the center's procurement needs, policies, and activities; (8) develops, reviews, and implements policies, methods and procedures for NCHHSTP non-research extramural assistance programs; (9) interprets general policy directives, proposed legislation, and appropriation language for implications on management and execution of center's programs; (10) provides consultation and technical assistance to NCHHSTP program officials in the planning, implementation, and administration of assistance programs; (11) develops, coordinates and implements objective review processes, including the SEP process for funding of CDC infectious disease non-research grants and cooperative agreements. (12) oversees the formulation of the NCHHSTP budget and responds to inquiries related to the budget; (13) provides technical information services to facilitate dissemination of relevant public health information and facilitates collaboration with national health activities, CDC components, other agencies and organizations, and foreign governments on international health activities; (14) provides oversight for the programmatic coordination of HIV, STD, viral hepatitis, and TB activities between NCHHSTP and other CIOs; develops recommendations to the CDC Director as the lead CIO for these programs for the distribution of HIV, STD, viral hepatitis, and TB funds CDC-wide; (15) provides guidance and coordination to divisions on cross-divisional negotiated agreements; (16) facilitates state and local cross-divisional issues identification and solutions; (17) in coordination with the Office of Program Planning and Policy Coordination, responds to Congress as needed; (18) serves as NCHHSTP liaison to relevant SSOs for all matters related to financial management; (19) serves as focal point for emergency operations and deployment; (20) manages and coordinates workforce development and succession planning activities within NCHHSTP in collaboration with internal and external partners, and coordinates the recruitment, assignment, technical supervision, and career development of staff with emphasis on developing and supporting diversity initiatives and equal opportunity goals; (21) facilitates the assignment of field staff in accordance with CDC and NCHHSTP priorities and objectives and reassesses the role of NCHHSTP field staff assignees to state and local health jurisdictions; and (22) provides center-wide training to supervisors, managers and team leaders.

Dated: May 15, 2013.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2013–12043 Filed 5–21–13; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 78 FR 27398–27399,

dated May 10, 2013) is amended to reorganize the Procurement and Grants Office, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in its entirety the titles and functional statements for Procurement and Grants Office (CAJH) insert the following:

Procurement and Grants Office (CAJH). (1) Advises the Director, Centers for Disease Control and Prevention (CDC), the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), and their staff, and provides leadership and direction for CDC acquisition and assistance activities to improve the public's health; (2) plans and develops CDC-wide policies, procedures, and practices in acquisition and assistance areas to support public health science and programs; (3) obtains research and development, services, equipment, supplies, and construction in support of CDC's public health mission through acquisition processes; (4) awards, administers, and terminates contracts, purchase orders, grants, and cooperative agreements essential to improve public health; (5) maintains a continuing program of reviews, evaluations, inquiries, and oversight activities of CDC-wide acquisitions and assistance to ensure adherence to laws, policies, procedures, regulations, and alignment to CDC's public health goals; and (6) maintains liaison with the Department of Health and Human Services (DHHS), General Services Administration (GSA), Government Accountability Office (GAO), and other federal agencies on acquisition and assistance policies, procedures, and operating matters.

Office of the Director (CAJH1). (1) Provides overall leadership, guidance and coordination in all areas of acquisitions and grants activities on behalf of the CDC; (2) provides overall leadership, guidance and coordination in all areas of the Procurement and Grants Office (PGO) activities in order to support CDC's public health mission; (3) provides leadership, supervision, and management of staff necessary to fully manage the performance of PGO; (4) ensures PGO's policies, processes, requests for information and procedures adhere to all rules and regulations and are in alignment with CDC's public health goals; (5) develops and implements organizational strategic planning goals and objectives that support CDC's public health goals; (6) provides overall budgetary and human resource management, and administrative support; (7) directs and coordinates activities in support of the department's Equal Employment Opportunity Program and employee development; (8) develops, implements, and manages professional development strategy and plan for PGO; (9) develops, implements, and manages recruiting, hiring, retention, and succession strategies; (10) coordinates creation and implementation of operating standards/procedures and processes, and monitors compliance; (11) provides and oversees the delivery of PGO-wide administrative management and support services in the areas of fiscal management, personnel, travel, records management, internal controls, and other administrative services; (12) develops and implements administrative policies, procedures, and operations, as appropriate, for PGO, and prepares special reports and studies, as required, in the administrative management areas; (13) serves as PGO's point of contact on all matters concerning facilities management and space utilization; (14) serves as PGO's coordinator of continuity of operations activities; (15) prepares annual budget formulation and budget justifications; (16) manages PGO's internal acquisition processes; (17) maintains liaison with DIMS, GSA, GAO, and other federal agencies on acquisition and assistance compliance activities; (18) maintains a continuing program of evaluation of PGO-wide internal procedures to ensure adherence to laws, policies, procedures, and regulations and make recommendations for ongoing improvement; (19) coordinates Inspector General and General Accounting Office audit activities; (20) coordinates financial audits and reviews and prioritizes resolution using risk-based approaches; (21) provides professional advice on accounting and cost principles in resolving audit exceptions as they relate to the acquisition and assistance processes; (22) develops an Annual Quality Assurance Plan; (23) provides technical and managerial direction for the development, implementation, and maintenance of grants and contracts systems; (24) manages HHS grants and administrative systems; (25) manages activities related to information security; and (26) ensures implementation of data standards across PGO.

Office of Policy, Performance, and Communications (CAJH13). (1) Provides technical and managerial direction for the development of PGO and CDC-wide policies in the acquisition and assistance areas to support CDC's public health science and programs; (2) participates with senior management in program planning, policy determinations, evaluations, and decisions concerning escalation points for acquisition and assistance; (3) provides leadership, coordination, and collaboration on issues management and triaging, and ensures the process of ongoing issues identification, management, and resolution; (4) conducts policy analysis (including regulatory, legal, economic) and identifies and tracks legislation; (5) provides policy review and clearance of materials; (6) manages and responds to Congressional inquiries (e.g., prepare briefings and hearings, facilitate reports to Congress); (7) identifies and assesses policy best practices and helps diffuse and replicate those practices; (8) identifies emerging or cross-cutting policy issues and serves as a catalyst in advancing action; (9) serves as the focal point for the policy analysis, technical review and final clearance of executive correspondence and policy documents that require approval from the CDC Director, CDC Leadership Team, or officials within DHHS; (10) maintains relations with key organizations and individuals working on grants and contract policies or related legislation; (11) coordinates and manages PGO annual planning activities with the Office of Acquisition Services and the Office of Grants Services; (12) conducts continuing studies and analysis of division activities and provides recommendations on workload efficiency and resource utilization; (13) manages and analyzes complex data, develops queries, reports, and analytic tools; (14) develops and implements PGO organizational performance and provides recommendations on performance improvement; (15) conducts ongoing environmental scans of data systems to evaluate PGO performance; (16) designs studies and conducts analysis to streamline grant and contract business processes and improve data consistency, availability, and accuracy; (17) creates PGO data standards; (18) manages activities and reporting for the CDC Director's Quarterly Performance Review initiative; (19) provides communications support to PGO Director and Deputy Director (e.g., presentations, emails, All Hands meetings); (20) manages the flow of any decision documents and correspondence for signature by PGO and CDC Directors; (21) ensures accurate and consistent information dissemination, including Freedom Of Information Act requests and Executive Secretariat controlled correspondence; (22) ensures consistent application of CDC correspondence standards and

styles; (23) designs, plans, organizes, develops, and implements employee communications activities; (24) provides centralized access to all tools and information held on the Intranet and provides leadership in the development and branding of PGO's Intranet and Internet sites and Web pages; (25) manages and responds to media requests for access to subject matter experts, reports, and publications; and (26) provides leadership, technical assistance, and consultation to PGO in establishing best practices in internal and external business communication and implements external communication strategies to promote and protect the agency's brand.

Office of Acquisition Services (CAJHK). The Office of Acquisition Services (OAS) provides leadership for operations and policies relating to agency-level acquisition functions, directs OAS staff development, and oversees acquisition activity analysis and business decision-making processes in support of the agency's public health mission.

Office of the Director (CAJHK1). (1) Provides overall leadership, guidance and coordination in all areas related to acquisitions; (2) provides leadership, supervision, and management of acquisitions staff; (3) ensures policies, processes, and procedures adhere to all rules and regulations and are in alignment with CDC's public health goals; (4) develops and implements organizational strategic planning goals and objectives; (5) provides budgetary and human resource management and administrative support; (6) develops procedures and guidance to implement CDC or office policies, HHS policies, and rules and regulations; (7) leads the development of contracts policy agendas with federal agencies and organizations; (8) provides cost advisory support to acquisitions activities with responsibility for initiating requests for audits and evaluations and providing recommendations to contracting officer, as required; (9) conducts continuing studies and analysis of acquisition activities; (10) provides technical and managerial direction for the development, implementation, and maintenance of acquisition systems; (11) maintains a continuing program of reviews, evaluations, inquiries and oversight activities of CDC-wide acquisitions to ensure adherence to laws, policies, procedures and regulations and alignment with CDC's public health goals; (12) provides technical and managerial direction for functions related to interagency agreement management and VISA purchase card management; (13) operates CDC's Small and Disadvantaged Business Program, and provides direction and support to various other socioeconomic programs encompassing acquisition and assistance activities; (14) develops formal training in procurement for awardees and CDC staff; (15) develops, implements and manages professional development related to required certifications; and (16) plans and directs all activities related to contract closeout.

Acquisition Branch 1 (CAJHKB). This branch supports one or more centers, and/or offices by performing the following: (1) Plans, directs, and conducts the acquisition of services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and noncompetitive) to support CDC's national and international public health operations, utilizing a wide variety of contract types and pricing arrangements; (2) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO and CDC; (3) participates with top program management in program planning, policy determination, evaluation, and direction concerning acquisition strategies and execution; (4) provides leadership and guidance to CDC project officers and public health program officials; (5) maintains a close working relationship with CDC program office components in carrying out their public health missions; (6) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (7) reviews statements of work from a management point of view for conformity to laws, regulations, and policies and alignment to CDC's public health goals, and negotiates and issues contracts; (8) directs and controls acquisition planning activities to assure total program needs are addressed and procurements are conducted in a logical, appropriate, and timely sequence; (9) provides continuing surveillance of financial and administrative aspects of acquisition-supported activities to assure compliance with appropriate DHHS and CDC policies and application to public health activities; (10) provides technical assistance, where indicated, to improve the management of acquisition-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC program offices and the public; (11) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (12) assures that contractor performance is in accordance with contractual commitments; (13) maintains branch's official contract files; (14) identifies and mitigates risks associated with contracts and purchase orders; and (15) provides innovative problem-solving methods in the coordination of international procurement for a wide range plan with public health partners in virtually all major domestic and international health agencies dealing with health priorities/issues, to include resolution of matters with the Department of State.

Acquisition Branch 2 (CAJHKC). This branch supports one or more centers, and/or offices by performing the following: (1) Plans, directs, and conducts the acquisition of services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and noncompetitive) to support CDC's national and international public health operations, utilizing a wide variety of contract types and pricing arrangements; (2) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO and CDC; (3) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (4) provides leadership and guidance to CDC project officers and public health program officials; (5) maintains a close working relationship with CDC program office components in carrying out their public health missions; (6) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (7) reviews statements of work from a management point of view for conformity to laws, regulations, and policies and alignment to CDC's public health goals and negotiates and issues contracts; (8) directs and controls acquisition planning activities to assure total program needs are addressed and procurements are conducted in a logical, appropriate, and timely sequence; (9) provides continuing surveillance of financial and administrative aspects of acquisition-supported activities to assure compliance with appropriate DHHS and CDC policies and application to public

health activities; (10) gives technical assistance, where indicated, to improve the management of acquisition-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC program offices and the public; (11) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (12) assures that contractor performance is in accordance with contractual commitments; (13) maintains branch's official contract files; and (14) identifies and mitigates risks associated with contracts and purchase orders.

Acquisition Branch 3 (CAJHKD). This branch supports one or more centers, and/or offices by performing the following: (1) Plans, directs, and conducts the acquisition of services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and noncompetitive) to support CDC's national and international public health operations, utilizing a wide variety of contract types and pricing arrangements; (2) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO and CDC; (3) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (4) provides leadership and guidance to CDC project officers and public health program officials; (5) maintains a close working relationship with CDC program office components in carrying out their public health missions; (6) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (7) reviews statements of work from a management point of view for conformity to laws, regulations, and policies and alignment to CDC's public health goals, and negotiates and issues contracts; (8) directs and controls acquisition planning activities to assure total program needs are addressed and procurements are conducted in a logical, appropriate, and timely sequence; (9) provides continuing surveillance of financial and administrative aspects of acquisition-supported activities to assure compliance with appropriate DHHS and CDC policies and application to public health activities; (10) gives technical assistance, where indicated, to improve the management of acquisition-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC program offices and the public; (11) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (12) assures that contractor performance is in accordance with contractual commitments; (13) maintains branch's official contract files; (14) identifies and mitigates risks associated with contracts and purchase orders; and (15) plans, directs, and conducts the acquisition of services, institutional support services, architect-engineering services, construction of new buildings, alterations, renovations, commodities, and equipment in support of CDC/ATSDR facilities, utilizing a wide variety of contract types and pricing arrangements.

Acquisition Branch 4 (CAJHKE). This branch supports one or more centers, and/or offices by performing the following: (1) Plans, directs, and conducts the acquisition of services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive) to support CDC's national and international public health operations, utilizing a wide variety of contract types and pricing arrangements; (2) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO and CDC; (3) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (4) provides leadership and guidance to CDC project officers and public health program officials; (5) maintains a close working relationship with CDC program office components in carrying out their public health missions; (6) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (7) reviews statements of work from a management point of view for conformity to laws, regulations, and policies and alignment to CDC's public health goals, and negotiates and issues contracts; (8) directs and controls acquisition planning activities to assure total program needs are addressed and procurements are conducted in a logical, appropriate, and timely sequence; (9) provides continuing surveillance of financial and administrative aspects of acquisition-supported activities to assure compliance with appropriate DHHS and CDC policies and application to public health activities; (10) gives technical assistance, where indicated, to improve the management of acquisition-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC program offices and the public; (11) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (12) assures that contractor performance is in accordance with contractual commitments; (13) maintains branch's official contract files; (14) identifies and mitigates risks associated with contracts and purchase orders; (15) assures the acquisition functions in support of the center are accomplished with field office locations; and (16) plans and directs all activities related to interagency agreements.

Office of Grants Services (CAJHL). The Office of Grants Services (OGS) provides leadership for operations and policies relating to agency-level grants functions, directs OGS staff development, and oversees grants activity analysis and business decision-making processes in support of the agency's public health mission.

Office of the Director (CAJHL1). (1) Provides overall leadership, guidance and coordination in all areas related to grants; (2) provides leadership, supervision, and management of grants staff; (3) ensures policies, processes, and procedures adhere to all rules and regulations and are in alignment with CDC's public health goals; (4) develops and implements organizational strategic planning goals and objectives; (5) provides budgetary, human resource management and administrative support; (6) develops procedures and guidance to implement CDC, HHS and office policies and rules and regulations; (7) leads the development of grants policy agendas with federal agencies and organizations; (8) provides cost advisory support to assistance activities with responsibility for initiating requests for audits and evaluations, and providing recommendations to grants management officer, as required; (9) conducts continuing studies and analysis of grant activities; (10) provides

technical and managerial direction for the development, implementation, and maintenance of grants systems; (11) provides measures of effectiveness and termination of grants and cooperative agreements; (12) maintains a continuing program of reviews, evaluations, inquiries, and oversight activities of CDC-wide assistance to ensure adherence to laws, policies, procedures, and regulations and alignment with CDC's public health goals; (13) provides technical and managerial direction for functions related to objective review and grants close out; (14) serves as a central CDC receipt and referral point for all applications for assistance funds, including interfacing with the automated grants systems and relevant DHHS line of business agencies and distributing draft public health program announcements for review; (15) develops formal training in grants management for awardees and CDC staff; and (16) develops, implements, and manages professional development related to required certifications.

Infectious Disease Services Branch (CAJHLB). This branch supports one or more centers, and/or offices by performing the following: (1) Plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive) across the public health system; (2) plans, directs, coordinates, and conducts the grants managements functions and processes in support of public health assistance awards; (3) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO and CDC; (4) provides leadership, direction, and approaches in developing grants announcements; (5) participates with leadership in program planning, policy determination, evaluation, and directions concerning assistance strategies and execution; (6) provides leadership and guidance to CDC project officers and public health program officials related to grants activities; (7) maintains a close working relationship with CDC program office components in carrying out their public health missions; (8) reviews assistance applications from a management point of view for conformity to laws, regulations, and policies and alignment to CDC's public health goals, and issues grants and cooperative agreements; (9) provides continuing surveillance of financial and administrative aspects of assistance-supported activities to assure compliance with appropriate DHHS and CDC policies and application to public health activities; (10) gives technical assistance, where indicated, to improve the management of assistance-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC office and the public; (11) assures that grantee performance is in accordance with assistance requirements; (12) provides for the collection and reporting of business management and public health programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; and (13) maintains branch's official assistance files.

Chronic Disease and Birth Defects Services Branch (CAJHLC). This branch supports one or more centers, and/or offices by performing the following: (1) Plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive) across the public health system; (2) plans, directs, coordinates, and conducts the grants managements functions and processes in support of public health assistance awards; (3) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO and CDC; (4) provides leadership, direction, and approaches in developing grants announcements; (5) participates with leadership in program planning, policy determination, evaluation, and directions concerning assistance strategies and execution; (6) provides leadership and guidance to CDC project officers and public health program officials related to grants activities; (7) maintains a close working relationship with CDC program office components in carrying out their public health missions; (8) reviews assistance applications from a management point of view for conformity to laws, regulations, and policies and alignment to CDC's public health goals, and issues grants and cooperative agreements; (9) provides continuing surveillance of financial and administrative aspects of assistance-supported activities to assure compliance with appropriate DHHS and CDC policies and application to public health activities; (10) gives technical assistance, where indicated, to improve the management of assistance-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC office and the public; (11) assures that grantee performance is in accordance with assistance requirements; (12) provides for the collection and reporting of business management and public health programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; and (13) maintains branch's official assistance files.

OD, Environmental, Occupational Health and Injury Prevention Services Branch (CAJHLD). This branch supports one or more centers, and/or offices by performing the following: (1) Plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and noncompetitive) across the public health system; (2) plans, directs, coordinates, and conducts the grants managements functions and processes in support of public health assistance awards; (3) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO and CDC; (4) provides leadership, direction, and approaches in developing grants announcements; (5) participates with leadership in program planning, policy determination, evaluation, and directions concerning assistance strategies and execution; (6) provides leadership and guidance to CDC project officers and public health program officials related to grants activities; (7) maintains a close working relationship with CDC program office components in carrying out their public health missions; (8) reviews assistance applications from a management point of view for conformity to laws, regulations, and policies and alignment to CDC's public health goals, and issues grants and cooperative agreements; (9) provides continuing surveillance of financial and administrative aspects of assistance-supported activities to assure compliance with appropriate DHHS and CDC policies and application to public health activities; (10) gives technical assistance, where indicated, to improve the management of assistance-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC office and the public; (11) assures that grantee performance is in accordance with assistance requirements; (12) provides for the collection and reporting of business management and public health programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (13) maintains branch's official assistance files; and (14) assures public health assistance functions are accomplished with field office locations.

Global Health Services Branch (CAJHLE). This branch supports one or more centers, and/or offices by

performing the following: (1) Plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive) across the public health system; (2) plans, directs, coordinates, and conducts the grants managements functions and processes in support of public health assistance awards; (3) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO and CDC; (4) provides leadership, direction, and approaches in developing grants announcements; (5) participates with leadership in program planning, policy determination, evaluation, and directions concerning assistance strategies and execution; (6) provides leadership and guidance to CDC project officers and public health program officials related to grants activities; (7) maintains a close working relationship with CDC program office components in carrying out their public health missions; (8) reviews assistance applications from a management point of view for conformity to laws, regulations, and policies and alignment to CDC's public health goals, and issues grants and cooperative agreements; (9) provides continuing surveillance of financial and administrative aspects of assistance-supported activities to assure compliance with appropriate DHHS and CDC policies and application to public health activities; (10) gives technical assistance, where indicated, to improve the management of assistance-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC office and the public; (11) assures that grantee performance is in accordance with assistance requirements; (12) provides for the collection and reporting of business management and public health programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (13) maintains branch's official assistance files; and (14) provides innovative problem-solving methods in the coordination of international grants for a wide range plan with public health partners in virtually all major domestic and international health agencies dealing with health priorities/issues, to include resolution of matters with the Department of State.

Dated: May 10, 2013.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2013–12044 Filed 5–21–13; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0514]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requests for Clinical Laboratory Improvement Amendments Categorization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requests for Clinical Laboratory Improvement Amendments of 1998 (CLIA) categorization of in vitro diagnostic (IVD) tests when a premarket review is not needed.

DATES: Submit either electronic or written comments on the collection of information by July 22, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Requests for CLIA Categorization—42 CFR 493.17 (OMB Control Number 0910–0607)—Extension

A guidance document entitled ''Guidance for Administrative Procedures for CLIA Categorization'' was released on May 7, 2008. The document describes procedures FDA uses to assign the complexity category to a device. Typically, FDA assigns complexity categorizations to devices at the time of clearance or approval of the device. In this way, no additional burden is incurred by the manufacturer because the labeling (including operating instructions) is included in the premarket notification (510(k)) or premarket approval application (PMA). In some cases, however, a manufacturer may request CLIA categorization even if FDA is not simultaneously reviewing a 510(k) or PMA. One example is when a manufacturer requests that FDA assign CLIA categorization to a previously cleared device that has changed names since the original CLIA categorization. Another example is when a device is exempt from premarket review. In such cases, the guidance recommends that manufacturers provide FDA with a copy of the package insert for the device and a cover letter indicating why the manufacturer is requesting a categorization (e.g. name change, exempt from 510(k) review). The guidance recommends that in the

correspondence to FDA the manufacturer should identify the product code and classification as well as reference to the original 510(k) when this is available.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Operating and maintenance costs
Request for CLIA categorization	60	15	900	1	900	$46,800

The number of respondents is approximately 60. On average, each respondent will request categorizations (independent of a 510(k) or PMA) 15 times per year. The cost, not including personnel, is estimated at $52 per hour ($52 \times 900$), totaling $46,800. This includes the cost of copying and mailing copies of package inserts and a cover letter, which includes a statement of the reason for the request and reference to the original 510(k) numbers, including regulation numbers and product codes. The burden hours are based on FDA familiarity with the types of documentation typically included in a sponsor's categorization requests, and costs for basic office supplies (e.g. paper).

Dated: May 15, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–12099 Filed 5–21–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0502]

Standardizing and Evaluating Risk Evaluation and Mitigation Strategies; Notice of Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 2-day public meeting to obtain input on issues and challenges associated with the standardization and assessment of risk evaluation and mitigation strategies (REMS) for drug and biological products. As part of the reauthorization of the Prescription Drug User Fee Act (PDUFA), FDA has committed to standardizing REMS to better integrate them into, and reduce their burden to, the existing and evolving health care system. As part of the PDUFA commitments, FDA will also seek to develop evidence-based methodologies for assessing the effectiveness of REMS.

To obtain input from stakeholders about REMS standardization and evaluation, FDA will hold a public meeting to give stakeholders, including health care providers, prescribers, patients, pharmacists, distributors, drug manufacturers, vendors, researchers, standards development organizations, and the public an opportunity to provide input on ways to standardize and assess REMS.

DATES: The meeting will be held on July 25 and 26, 2013, from 8:30 a.m. to 4:30 p.m. Individuals who wish to present at the meeting must register by July 10, 2013. See section IV of this document for information on how to register to speak at the meeting.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify each set of comments with the corresponding docket number for the public meeting as follows: ''Docket No. FDA–2013–N–0502, ''Standardization and Evaluation of Risk Evaluation and Mitigation Strategies, Public Meeting.''

FOR FURTHER INFORMATION CONTACT: Adam Kroetsch, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, Rm. 1192, Silver Spring, MD 20993, 301–796–3842, FAX: 301–847–8443, email: *REMS_Standardization@fda.hhs.gov.*

I. Background

This meeting builds upon prior stakeholder feedback on and input into the design, implementation, and assessment of REMS. In July 2010, FDA held a public meeting to obtain input on issues associated with the development and implementation of REMS. In June 2012, FDA held a public workshop to discuss survey methodologies and instruments that can be used to evaluate patients' and health care providers' knowledge about the risks of drugs marketed with an approved REMS. In addition, the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) requires FDA to bring, at least annually, one or more drugs with REMS with elements to assure safe use (ETASU) before the Drug Safety and Risk Management Advisory Committee. FDA also regularly discusses both pre- and postapproval REMS with ETASUs with various FDA advisory committees in the context of specific applications.

This meeting also builds on FDA's internal efforts to improve the design, implementation and assessment of REMS. In 2011, FDA created the REMS Integration Initiative, designed to evaluate and improve its implementation of REMS authorities. More information about the REMS Integration Initiative can be found at (*http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm350852.htm*). As part of this effort, FDA seeks to improve future REMS assessments and incorporate the latest methodologies in the evolving science of risk management. In its February 2013 report, ''FDA Lacks Comprehensive Data to Determine Whether Risk Evaluation and Mitigation Strategies Improve Drug Safety,'' the Department of Health and Human Services Office of the Inspector General affirmed the need to identify and implement reliable methods to assess the effectiveness of REMS and REMS components. This report is available at *https://oig.hhs.gov/oei/reports/oei-04-11-00510.pdf.*

This public meeting is intended to meet performance goals included in the fifth reauthorization of the Prescription Drug User Fee Act (PDUFA V). This reauthorization, part of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) signed by the President on July 9, 2012, includes a number of performance goals and procedures that are documented in the PDUFA V

Commitment Letter. (See ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 Through 2017,'' which is available at *http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf*.)

FDA developed the performance goals and procedures for PDUFA V in consultation with drug industry representatives, patient and consumer advocates, health care professionals, and other public stakeholders from July 2010 through May 2011. Title XI of the letter, ''Enhancement and Modernization of the FDA Drug Safety System,'' states that FDA user fees will be used to enhance REMS by measuring the effectiveness of REMS and evaluating, with stakeholder input, appropriate ways to better integrate them into the existing and evolving health care system. (See ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017'' at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf*).

Toward that end, the PDUFA V Commitment Letter identified a number of specific goals, including holding one or more public meetings to explore strategies to standardize REMS and reduce the burden of implementing REMS on practitioners, patients, and others in various health care settings and on methodologies for assessing whether REMS are mitigating the risks they purport to mitigate and for assessing the effectiveness and impact of REMS, including methods for assessing the effect on patient access, individual practitioners, and the overall burden on the health care delivery system. FDA also committed to issuing a report of its findings regarding standardizing REMS; the report will identify priority projects in four areas (pharmacy systems, prescriber education, providing benefit/risk information to patients, and practice settings). FDA also committed to issuing guidance on methodologies for assessing REMS, specifically, methodologies for determining whether a specific REMS with ETASU is commensurate with the specific serious risk listed in the labeling of the drug and considering the observed risk, not unduly burdensome on patient access to the drug. For details on specific FDA commitments, see the PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 Through 2017, Section XI, ''Enhancement and Modernization of the FDA Drug Safety System,'' Parts A2, A3, which is available at *http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf*.

II. Purpose and Scope of Meeting

The purpose of this public meeting is to obtain feedback from stakeholders on: (1) Issues and challenges associated with standardizing and assessing REMS for drug and biological products and (2) identifying potential projects that will help standardize REMS and integrate them into the health care delivery system. FDA is seeking information and comments from a broad range of stakeholders, including interested health care providers, prescribers, patients, pharmacists, distributors, drug manufacturers, vendors, researchers, standards development organizations, and the public.

To promote greater standardization and improved assessment of REMS, FDA is seeking feedback on how to reduce any unnecessary variation in REMS and, in the process, to make REMS elements and associated tools less burdensome to stakeholders, better integrated into the health care system, more effective, and easier to assess. FDA recognizes that the REMS elements and associated tools found in existing REMS programs have varied. In some cases, these variations are appropriate, because REMS are designed to address specific risks posed by particular drugs in a wide range of patient populations and health care settings. However, FDA may be able to establish standards to reduce unnecessary variation and to make REMS more predictable and simpler to understand, implement, and measure. The establishment of standards also presents the opportunity to improve upon the design of REMS elements and associated tools and assessment methodologies in the future.

After this meeting, FDA will issue a report to the public that identifies REMS standardization projects in the four areas specified in the PDUFA V commitment letter: Prescriber education, pharmacy systems, practice settings, and providing benefit/risk information to patients. FDA welcomes stakeholder input to help identify high-quality projects that could offer FDA and stakeholders the opportunity to develop, test, and implement new approaches to standardizing REMS and integrating them into the health care system. The scope of such projects might include research studies, demonstration projects, and the development of new REMS tools using, for example, emerging information technologies or existing controls in the health care system. These projects might be carried out by FDA alone or in collaboration with stakeholders and outside experts.

III. Scope of Public Input Requested

FDA is particularly interested in obtaining information and public comment on the following areas:

A. Prescriber-Directed REMS Tools

REMS programs use a number of tools to educate prescribers and/or ensure that they carry out REMS requirements, including screening, monitoring, and counseling patients. These tools have included risk communications to prescribers, prescriber training, and instruments to help prescribers prescribe the drug safely—for example, counseling guides and checklists.

1. Many REMS with elements to assure safe use provide for prescriber training on the risks of the drug and how to use the drug safely. In some REMS, the completion of this training is required before a person can become a certified prescriber of the drug. Sponsors provide REMS training in a variety of formats, including in-person, online, and through printed materials. FDA is interested in input on which formats and training approaches are most effective for prescriber training; how frequently prescribers should be asked to take REMS training and whether a single training is sufficient; what additional tools could be used to reinforce what prescribers learn during the training and help them apply what they have learned; and how REMS training could be incorporated into continuing medical education programs.

2. Prescriber training often includes knowledge assessments that prescribers must successfully complete as part of the training. These knowledge assessments, which typically take the form of multiple-choice questions, are designed to ensure that the prescriber understands the training material; they also serve to reinforce key messages from the training. (Knowledge assessments should not be confused with the surveys of knowledge that drug manufacturers may conduct as part of their REMS assessments.) FDA is interested in input on when knowledge assessments should be included in REMS and whether they should be included in all REMS that include prescriber training. In addition, FDA requests input on how knowledge assessments can be designed to ensure accurate measurement of prescribers' knowledge and how knowledge assessments can be designed to measure or predict prescribers' ability to apply what they have learned in their practice.

3. Once prescribers have met all requirements for certification under the

REMS (e.g., completed training), they generally must complete an enrollment form to be recognized as certified and able to prescribe the drug. Generally, by completing, signing, and submitting the enrollment form, prescribers acknowledge their understanding of the drug's risks and the REMS requirements. In some REMS, the enrollment form also is used to share information about the risks of the drug and how to use the drug safely. FDA is interested in stakeholder input on whether the information and agreements included in current REMS prescriber enrollment forms are presented in a way that is easy for prescribers to understand. Also, what, if anything, should be done to standardize, simplify, or streamline prescriber enrollment forms and the overall prescriber enrollment process?

4. What else can be done to improve the effectiveness of existing prescriber-directed REMS tools, to standardize them, to reduce their burden, and/or to better integrate them into the health care delivery system?

5. What tools and technologies not currently used in REMS could be incorporated into REMS to help educate prescribers and ensure that they carry out REMS requirements? What evidence exists to support the effectiveness of these tools and technologies?

6. What projects could be carried out to standardize the provision of prescriber education in REMS?

7. What projects could be carried out to better integrate REMS into prescriber practice settings?

8. What methodologies exist or might be developed to assess the effectiveness of prescriber-directed REMS tools, the tools' burden on the health care delivery system, and the effect of these tools on patient access?

B. Patient-Directed REMS Tools

REMS programs may use a number of tools to educate and counsel patients, provide patients with information about the risks of the drug, and help to ensure that patients use the drug safely. These tools may include patient enrollment in the REMS, patient monitoring, counseling by health care professionals, Medication Guides, and other patient-directed educational materials.

1. REMS use a range of written materials to help educate and counsel patients, including Medication Guides. In some cases, health care practitioners give these materials to patients to read on their own, and in other cases health care providers are asked to review these materials with patients and use them in patient counseling.

2. In REMS that include patient education, what would make written educational materials more effective? What other materials, tools, and technologies, (e.g., reference materials, checklists, smartphone applications) might be used to help educate patients and reinforce what they have learned?

3. How could the provision of information to patients be standardized, and what are the most efficient ways of providing information to patients given the variety of patient information needs and learning styles?

4. In many REMS, patients receive counseling that may include a discussion of the benefits and risks of the drug as well as instructions on how to use the drug safely. In the majority of such REMS, prescribers are called upon to counsel patients, but other health care practitioners, including pharmacists and nurses, may also play a role in counseling patients. What are ways to improve current REMS approach to counseling patients? How should the timing and frequency of patient counseling be determined? Under what circumstances is it appropriate for prescribers to provide patient counseling in a REMS, when should other providers play a role in counseling patients in a REMS, and how can patient counseling in REMS be integrated into pharmacists' existing medication therapy management practices?

5. Many REMS with elements to assure safe use include prescriber-patient agreements. These agreements are used to document that an informed discussion of the drug's benefits and risks took place and that the patient understood the risks. Prescriber-patient agreements may also support patient counseling by providing information for prescribers to review with patients. Some REMS require that these agreements be signed by the prescriber and patient and submitted to the drug manufacturer. Are the information and agreements included in prescriber-patient agreements presented in a way that is easy for patients to understand and act upon? What, if anything, should be done to standardize, simplify, or streamline prescriber-patient agreement forms and the overall agreement process?

6. What else can be done to improve the effectiveness of existing patient-directed tools, to standardize them, to reduce their burden, and/or to better integrate them into the existing and evolving health care delivery system?

7. What tools and technologies not currently used in REMS could be incorporated into REMS to help counsel patients, to provide them with information on the risks of the drug, and to ensure that they use the drug safely? What evidence exists to support the effectiveness of these tools and technologies?

8. What projects could be carried out to standardize the provision of benefit-risk information to patients?

9. What methodologies exist or might be developed to assess the effectiveness of patient-directed REMS tools, the tools' burden on the health care delivery system, and the effect of these tools on patient access?

C. REMS Tools in Drug Dispensing Settings

Drug dispensing settings, such as prescribers' offices, hospitals, pharmacies (e.g., specialty, retail, and mail-order), integrated health care delivery systems, and infusion centers, often play a significant role in REMS. This is a challenging area to address because of the wide range of health care settings involved and because dispensers are frequently called upon to coordinate care across a range of health care settings and practitioners and to reinforce the tools that have been used by other health care practitioners. Specific dispensing settings may be required to obtain certification under a REMS, and, like prescribers, the health care practitioners who dispense a drug (authorized dispensers) may be required to complete training, counsel patients, and provide patients with educational materials, including Medication Guides. In addition, dispensers may be required to document that certain safe-use conditions are met before dispensing (e.g., by ordering/checking lab tests or completing a form or checklist).

Many REMS with elements to assure safe use require that specific health care settings be certified to be able to dispense the drug. To certify the health care setting, REMS typically require a representative of that health care setting to agree that the health care setting will meet all REMS requirements, including the completion of any necessary training.

1. Under what circumstances should individual practitioners within a health care setting (e.g., pharmacists, as opposed to pharmacies) be certified, instead of the health care setting? How could this effectively be accomplished while minimizing the burden on the health care system?

2. In most REMS that include dispenser certification, each dispensing site is certified individually. Under what circumstances would it be appropriate to use a single certification for a health care setting with multiple dispensing sites such as a pharmacy

chain, an integrated health care system, or a hospital system?

3. In what ways can the implementation of REMS tools in different dispensing settings be standardized, and under what circumstances might the implementation approach need to vary to accommodate the different types of dispensing settings that can be part of a REMS?

4. What obstacles have made it difficult for authorized dispensers to obtain drugs under existing REMS, and how can these be overcome?

5. How can REMS be made more compatible with existing systems for the procurement and distribution of drugs? How can REMS be integrated into any future electronic track and trace systems?

6. What else can be done to improve the effectiveness of existing REMS tools in drug dispensing settings, to standardize them, to reduce their burden, and/or to better integrate them into the existing and evolving health care delivery system?

7. What tools and technologies not currently used in REMS could be incorporated into REMS to help train and certify authorized dispensers, ensure that only certified dispensers can obtain the drug, and ensure that any safe-use conditions are met before a drug is dispensed? What evidence exists to support the effectiveness of these tools and technologies?

8. What projects could be carried out to integrate REMS tools into pharmacy systems?

9. What projects could be carried out to integrate REMS tools into other drug dispensing settings, such as hospitals, pharmacies, long-term care facilities, and integrated health care delivery systems?

10. What methodologies exist or might be developed to assess the effectiveness of REMS tools across the range of dispensing settings, the tools' burden on the health care delivery system, and the effect of these tools on patient access?

D. Approaches to Standardizing REMS Tools

Many stakeholders have asked FDA to standardize specific REMS tools like stakeholder enrollments, Web sites, and educational materials. Standardizing REMS tools will require ongoing collaboration among FDA, drug manufacturers, stakeholders, scientific experts, and others. To ensure that standardized tools are effective and minimally burdensome, they should be developed in an open and inclusive process that incorporates the feedback of all relevant stakeholders as well as the latest science and best practices from across the health care system. To ensure the continued success of these tools, they must be updated regularly as best practices evolve.

1. What opportunities and barriers exist for the development and implementation of standardized REMS tools? What are some ways that FDA can collaborate with third parties such as standards development organizations, industry groups, professional societies, and accreditation organizations to develop standardized REMS tools and ensure their adoption?

2. How might health information technologies such as electronic health records, pharmacy management systems and electronic prescribing systems be used to integrate REMS into existing health care settings? What role might health information technologies play in REMS in the future? How can these technologies be used to inform practitioners and patients about REMS, monitor patients, and document that any safe-use conditions are met? Could the integration of REMS into health information systems ever reduce or eliminate the need for other REMS tools, such as provider education?

3. Many stakeholders have suggested that a single Web portal should be established to act as a repository for standardized REMS tools and materials and to serve as a central information or reference source for REMS stakeholders. What barriers exist for the development of a single REMS Web portal? Who would be responsible for developing and maintaining the Web portal, and what role would FDA play?

E. Approaches To Assessing the Impact of REMS

Drug manufacturers are required to submit assessments of their REMS on a regular basis. To date, these assessments have tried to evaluate the effectiveness of the REMS by measuring the frequency of adverse outcomes of interest, the knowledge of stakeholders, and the compliance of stakeholders with certain REMS requirements. To accomplish this, drug manufacturers have relied on spontaneous adverse event reporting, knowledge surveys, and systems that track stakeholder completion of certain activities, such as enrollment and documentation of safe use conditions. To improve how REMS are assessed, FDA is considering additional areas for measurement and additional methods to measure the impact of REMS.

1. Should FDA routinely ask sponsors to assess the overall impact of their REMS on prescriber, dispenser, and patient burden, and/or access to the drug? If so, how could drug manufacturers assess the REMS impact on access and burden?

2. What methods might be used to separate the impact of a REMS program from that of other related risk management activities? Without having a control group, how should FDA interpret and act on REMS assessment information?

3. It is possible to interpret evidence of sustained REMS effectiveness to mean that the REMS should be maintained indefinitely, but such evidence may also suggest that safe use of the drug is now ingrained in the health care system and that the REMS can be modified or eliminated. What evidence could help FDA determine whether a drug would continue to be used safely if the REMS were modified or released?

IV. Attendance and Registration

The FDA Conference Center at the White Oak location is a federal facility with security procedures and limited seating. Attendance is free and will be on a first come, first served basis. Individuals who wish to present at the public meeting must register on or before July 10, 2013, through *http://remsmeeting.eventbrite.com* and provide complete contact information, including name, title, affiliation, address, email, and phone number. In section III of this document, FDA has included questions for comment. You should identify the questions you wish to address in your presentation, so that FDA can consider that in organizing the presentations. FDA will do its best to accommodate requests to speak, and will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. An agenda will be available approximately 2 weeks before the meeting at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm351029.htm.*

If you need special accommodations because of disability, please contact Adam Kroetsch (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

A live Web cast of this meeting will be viewable at *https://collaboration.fda.gov/remsjuly2013/* on the day of the meeting. A video record of the meeting will be available at the same Web address for 1 year.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov*

or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. To ensure consideration, submit comment by (see **DATES**). Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

VI. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: May 16, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–12124 Filed 5–21–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration (Science Board).

General Function of the Committee: The Science Board provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice to the Agency on keeping pace with technical and scientific developments including in regulatory science; and input into the Agency's research agenda; and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on Monday, June 24, 2013, from approximately 1 p.m. to 3:45 p.m.

Location: Food and Drug Administration, White Oak Bldg. 31, Rm. 1503, section A, 10903 New Hampshire Ave., Silver Spring, MD 20993. This meeting will be held via teleconference (301–796–4100 or 866–901–3913; passcode: 665127) and via Adobe Connect (*https://collaboration.fda.gov/scienceboard*). Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Martha Monser, Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, White Oak Bldg. 32, Rm. 4286, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4627, email: *martha.monser@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On June 24, 2013, the Science Board will be provided draft final reports from the Center for Devices and Radiological Health Research Review subcommittee, and the Global Health subcommittee. A revised charge (initially proposed at the October 3, 2012, Science Board meeting) regarding a new subcommittee to evaluate the Agency's continuing work to address the challenges identified in the Science Board's 2007 ''Science and Mission at Risk'' Report will be presented.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before Monday, June 17, 2013. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 1:45 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before Friday, June 7, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by Monday, June 10, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Martha Monser, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on

public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 16, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–12152 Filed 5–21–13; 8:45 am]

BILLING CODE 4160–01–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: June 12, 2013.

Time: 3:30 p.m. to 5:30 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, Ph.D., 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: Surgical Sciences and Bioengineering.

Date: June 17, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Malgorzata Klosek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Developments & Therapeutics.

Date: June 18–19, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIB Pediatric and Fetal Applications.

Date: June 18, 2013.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology.

Date: June 18, 2013.

Time: 2:00 p.m. to 4:30 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: Kenneth M Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge, Rm 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: June 19, 2013.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Chicago Downtown/River North, 30 East Hubbard, Chicago, IL 60611.

Contact Person: Olga A Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: June 19, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Inn of Chicago, 162 East Ohio Street, Chicago, IL 60611.

Contact Person: Robert Garofalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Societal and Ethical Issues in Research Study Section.

Date: June 19, 2013.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Tremont Suites Hotel and Grand Historic Venue, 222 St. Paul Place, Baltimore, MD 21202.

Contact Person: Karin F. Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–260: Global Infectious Disease Research Training.

Date: June 19, 2013.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Center for Computational Mass-Spectrometry.

Date: June 19–21, 2013.

Time: 7:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: La Jolla Shores Hotel, 8110 Camino Del Oro, La Jolla, CA 92037.

Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapy.

Date: June 19, 2013.

Time: 12:00 p.m. to 2:30 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: Syed M. Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@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: May 16, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12112 Filed 5–21–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pathway to Independence—K22/K99 Applications.

Date: June 13–14, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

Name of Committee: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: June 14, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H. Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, (301) 435–0303.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Mentoring Programs to Promote Diversity in Health Research

Date: June 14, 2013.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance by Marriott Dupont Circle, 1143 New Hampshire Ave, NW., Washington, DC 20037.

Contact Person: Stephanie L Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 16, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12113 Filed 5–21–13; 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; Hypersensitivity, Autoimmune, and Immune-mediated Disease Overflow.

Date: June 7, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance, Washington, DC Hotel, 999 Ninth Street NW., Washington, DC 20001–4427.

Contact Person: Jin Huang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1187, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment and Neural Disorders.

Date: June 10, 2013.

Time: 1:00 p.m. to 3:30 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: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

Date: June 13–14, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance, Washington, DC Hotel, 999 Ninth Street NW., Washington, DC 20001–4427.

Contact Person: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@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: May 16, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12111 Filed 5–21–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2002–11602]

Intent to Request Renewal From OMB of One Current Public Collection of Information: Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0005, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected

burden. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States.

DATES: Send your comments by July 22, 2013.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins at the above address, or by telephone (571) 227–3398.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0006; Security Programs for Foreign Air Carriers, 49 CFR part 1546. TSA uses the information collected to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. Foreign air carriers must carry out security measures to provide for the safety of persons and property traveling on flights provided by the foreign air carrier against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States.

The information TSA collects includes identifying information on foreign air carriers' flight crews and passengers. Specifically, TSA requires foreign air carriers to submit the following information: (1) A master crew list of all flight and cabin crew members flying to and from the United States; (2) the flight crew list on a flight-by-flight basis; (3) passenger information on a flight-by-flight basis; and (4) total amount of cargo screened. Foreign air carriers are required to provide this information via electronic means. Foreign air carriers with limited electronic systems may need to modify their current systems or develop a new computer system in order to submit the requested information.

Additionally, foreign air carriers must maintain these records, as well as training records for crew members and individuals performing security-related functions, and make them available to TSA for inspection upon request. TSA will continue to collect information to determine foreign air carrier compliance with other requirements of 49 CFR part 1546. TSA estimates that there will be approximately 170 respondents to the information collection, with an annual burden estimate of 1,029,010 hours.

Dated: May 15, 2013

Susan L. Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2013–12224 Filed 5–21–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0016]

Agency Information Collection Activities: Application for Advance Permission To Return to Unrelinquished Domicile, Form I–191; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on March 15, 2013, at 78 FR 16519, allowing for a 60-day public comment period. USCIS received one comment submission in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 21, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov*. The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0070 or via email at *uscisfrcomment@uscis.dhs.gov*. All submissions received must include the agency name and the OMB Control Number 1615–0016.

SUPPLEMENTARY INFORMATION:

Comments: Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Return to Unrelinquished Domicile.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–191; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–191 is necessary for USCIS to determine whether the applicant is eligible for discretionary relief under section 212(c) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 respondents with an estimated burden per response of 1 hour per response (to include 15 minutes for gathering required documentation and information, 10 minutes for reading the instructions, and 35 minutes for completing and submitting the application).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–12190 Filed 5–21–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of February 21, 2013.

DATES: *Effective Dates:* The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on February 21, 2013. The next triennial inspection date will be scheduled for February 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 1550 Industrial Park Drive, Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf

Dated: April 29, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–12184 Filed 5–21–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of October 17, 2012.

DATES: *Effective Dates:* The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on October 17, 2012. The next triennial inspection date will be scheduled for October 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 7315 S. 76th Ave., Bridgeview, IL 60455, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and

Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf

Dated: April 29, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–12183 Filed 5–21–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5697–N–01]

Section 8 Housing Assistance Payments Program-Annual Adjustment Factors, Fiscal Year 2013

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Fiscal Year (FY) 2013 Annual Adjustment Factors (AAFs).

SUMMARY: The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustments to monthly rentals for units covered by the contracts. This notice announces FY 2013 AAFs for adjustment of contract rents on assistance contract anniversaries. The factors are based on a formula using residential rent and utility cost changes from the most recent annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. These factors are applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this notice. For FY 2011 and FY 2010, these AAFs were designated as ''Contract Rent'' AAFs, to differentiate them from ''Renewal Funding'' AAFs that were used exclusively for renewal funding of tenant-based rental assistance. Renewal Funding AAFs were replaced by an inflation factor established by the Secretary in FY 2012, so there is no need to differentiate the AAF by use. A separate **Federal Register** Notice will be published at a later date that will identify the inflation factors that will be used to adjust tenant-based rental assistance funding for FY 2013.

DATES: *Effective Date:* May 22, 2013.

FOR FURTHER INFORMATION CONTACT: Contact Michael S. Dennis, Director, Housing Voucher Programs, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, 202–708–1380, for questions relating to the Project-Based Certificate and Moderate Rehabilitation programs (non-Single Room Occupancy); Ann Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202–708–4300, for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, 202–708–3000, for questions relating to all other Section 8 programs; and Marie Lihn, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, 202–402–5866, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. The mailing address for these individuals is: Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Tables showing AAFs will be available electronically from the HUD data information page at *http://www.huduser.org/portal/datasets/aaf/FY2013_tables.pdf*

I. Applying AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (i.e., pre-renewal) term of the HAP contract and for all units in the Project-Based Certificate program. There are three categories of Section 8 programs that use the AAFs:

Category 1: The Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs;

Category 2: The Section 8 Loan Management (LM) and Property Disposition (PD) programs; and

Category 3: The Section 8 Project-Based Certificate (PBC) program.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. With the exception of the Project-Based Certificate program, AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

Tenant-based Certificate Program. In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated and all tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program, which does not use AAFs to adjust rents. All tenancies remaining in the project-based certificate program continue to use AAFs to adjust contract rent for outstanding HAP contracts.

Voucher Program. AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002–10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97–57 (Moderate Rehabilitation and Project-Based Certificates).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program), the published AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 AAF is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the contract rent will be the greater of the comparable rent level (plus any initial difference) or the pre-adjustment contract rent. The pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is restrained by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: Section 8 Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time Category 2 programs are not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).)

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

- The Table 2 AAF is always used. The Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.
- The new rent to owner will not be reduced below the contract rent on the effective date of the HAP contract.

III. When to Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

- For all tenancies assisted in the Section 8 Project-Based Certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

Legislative history for this statutory provision states that ''the rationale [for lower AAFs for non-turnover units is] that operating costs are less if tenant turnover is less...'' (see Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994)). The Congressional Record also states the following:

> Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in the unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants in section 8 projects and under the Certificate program, HUD should expect to benefit from this 'tenure discount.' Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

To implement the law, HUD publishes two separate AAF Tables, Tables 1 and 2. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute.

IV. How To Find the AAF

AAF Tables 1 and 2 are posted on the HUD User Web site at *http://www.huduser.org/portal/datasets/aaf/FY2013_tables.pdf*. There are two columns in each AAF table. The first column is used to adjust contract rent for rental units where the highest cost utility is included in the contract rent, i.e., if the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, i.e., if the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for ''Highest Cost Utility Included.'' If highest cost utility is not included, select the AAF from the column for ''Highest Cost Utility Excluded.''

V. Methodology

AAFs are rent inflation factors. Two types of rent inflation factors are calculated for AAFs: Gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence, but does not reflect any change in the cost of utilities. The gross rent inflation factor is designated as ''Highest Cost Utility Included'' and the shelter rent inflation factor is designated as ''Highest Cost Utility Excluded.''

AAFs are calculated using CPI data on ''rent of primary residence'' and ''fuels

and utilities.'' [1] The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the ''contract rent'' which includes units with all utilities included in the rent, units with some utilities included in the rent, and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying data from the Consumer Expenditure Survey (CEX) on the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) and also American Community Survey (ACS) data on the ratio of utilities to rents.[2]

Survey Data Used To Produce AAFs

The rent and fuel and utilities inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from 2010 to 2011. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2010 CEX survey data produced for HUD for the purpose of computing AAFs. The utility-to-rent ratio used to produce AAFs comes from 2010 ACS median rent and utility costs.

Geographic Areas

AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the AAF that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called the ''HUD Metro FMR Area'' (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. Almost all non-metropolitan counties use regional CPI factors.[3] For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables and each HMFA is listed alphabetically within its respective CBSA. Each AAF applies to a specific geographic area and to units of all bedroom sizes. AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions (to be used for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey).

AAFs use the same OMB metropolitan area definitions, as revised by HUD, that are used for the FY 2012 FMRs.

Area Definitions

To make certain that they are using the correct AAFs, users should refer to the Area Definitions Table section at *http://www.huduser.org/portal/datasets/aaf/FY2013_AreaDef.pdf.* The Area Definitions Table lists CPI areas in alphabetical order by state, and the associated Census region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not specifically listed in the Area Definitions Table at *http://www.huduser.org/portal/datasets/aaf/FY2013_AreaDef.pdf.*

Puerto Rico and the Virgin Islands use the South Region AAFs. All areas in Hawaii use the AAFs listed next to ''Hawaii'' in the Tables which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region AAFs.

[1] CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

[2] The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at *www.HUDUSER.org.*

[3] There are four non-metropolitan counties that continue to use CPI city updates: Ashtabula County, OH, Henderson County, TX, Island County, WA, and Lenawee County, MI. BLS has not updated the geography underlying its survey for new OMB metropolitan area definitions and these counties, are no longer in metropolitan areas, but they are included as parts of CPI surveys because they meet the 75 percent standard HUD imposes on survey coverage. These four counties are treated the same as metropolitan areas using CPI city data.

Dated: May 10, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013–12174 Filed 5–21–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DR5A311IA000113]

Secretarial Commission on Indian Trust Administration and Reform

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretarial Commission on Indian Trust Administration and Reform (the Commission) will hold a public meeting on June 7, 2013. During the public meeting, the Commission will: Attend to operational activities of the Commission; receive an update on the leasing regulations/HEARTH Act implementation; gain insights and knowledge from invited speakers and attendees about the trust relationship, other trust models, and trust reform; review Commission action items; and gain insights and perspectives from members of the public.

DATES: The Commission's public meeting will begin at 8 a.m. and end at 12 p.m. on June 7, 2013. Members of the public who wish to attend should RSVP by June 3, 2013, to: *trustcommission@ios.doi.gov*.

ADDRESSES: The public meeting will be held at the Courtyard by Marriott Downtown Oklahoma City, Two West Reno, Oklahoma City, OK 73102. We encourage you to RSVP to *trustcommission@ios.doi.gov* by June 3, 2013.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240; or email to *Lizzie_Marsters@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Secretarial Commission on Indian Trust Administration and Reform was established under Secretarial Order No. 3292, dated December 8, 2009. The Commission plays a key role in the Department's ongoing efforts to empower Indian nations and strengthen nation-to-nation relationships.

The Commission will complete a comprehensive evaluation of the

Department's management and administration of the trust assets within a two-year period and offer recommendations to the Secretary of the Interior of how to improve in the future. The Commission will:

(1) Conduct a comprehensive evaluation of the Department's management and administration of the trust administration system;

(2) Review the Department's provision of services to trust beneficiaries;

(3) Review input from the public, interested parties, and trust beneficiaries, which should involve conducting a number of regional listening sessions;

(4) Consider the nature and scope of necessary audits of the Department's trust administration system;

(5) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from the Commission's activities, including whether any legislative or regulatory changes are necessary to permanently implement such improvements; and

(6) Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians, and make recommendations to the Secretary regarding any such termination.

Comprehensive Evaluation

The Commission's purpose is to provide a thorough evaluation of the existing Indian trust management and trust administration system to support a reasoned and factually based set of options for potential management improvements. Grant Thornton LLP in partnership with Cherokee Services Group has been awarded a contract to perform a comprehensive evaluation of the Department's management of the trust administration system in support of the Commission's efforts.

This evaluation will depend on a nationwide information-gathering effort to produce meaningful recommendations. Over the next few months the management consultant will be contacting individuals, tribes, and Interior bureaus and offices to discuss current approaches to trust management and recommendations for improvement. The management consultant will also be assessing past trust reform efforts and capturing current initiatives already underway which contribute to a more effective trust management effort.

The management consultant will be attending the upcoming Indian Trust Commission's meeting in Oklahoma City and will be available to speak with if you wish to provide input and recommendations. The Commission encourages individuals to take the opportunity to provide Grant Thornton with your perspective on how the trust administration system currently operates. To contact Grant Thornton directly, you may send an email to *Trust.Commission@us.gt.com*.

Sovereignty Symposium 2013

Members of the Commission have been asked to sit on a panel to discuss the Trust Commission's work and share any draft recommendations regarding trust management and administration, and invite feedback from attendees. Members of the public will need to register separately and pay appropriate registration fees by visiting the Sovereignty Symposium 2013 Web page at *www.thesovereigntysymposium.com*. The Commission's panel session is scheduled for Thursday, June 6, 2013, from 1:30 p.m. to 5 p.m. at the Skirvin Hilton Hotel, One Park Avenue, Oklahoma City, OK 73102. The Commission would like the attendees of the Sovereignty Symposium to be aware that Grant Thornton, the management consultant, will be onsite Thursday, June 6, to interview allottees, beneficiaries, and tribal representatives. The Commission encourages individuals to take the opportunity to provide Grant Thornton with your perspective on how the trust administration system currently operates. To contact Grant Thornton directly, you may send an email to *Trust.Commission@us.gt.com*.

Public Meeting Details

On Friday, June 7, 2013, the Commission will hold a meeting open to the public. The following items will be on the agenda:

Friday, June 7, 2013

- Invocation
- Welcome, introductions, agenda review
- Commission operations reports and decision making
- Panel session regarding an update on leasing regulations and HEARTH Act implementation
- Gain insights and knowledge from invited speakers and attendees about the trust relationship, other trust models, and trust reform
- Review action items, meeting accomplishments and
- Closing blessing, adjourn

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public. To review all related material on the Commission's work, please refer to *http://www.doi.gov/cobell/commission/index.cfm*.

Dated: May 17, 2013.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2013–12199 Filed 5–21–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N122; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and [Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before June 21, 2013. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by June 21, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**.

Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Thirsty River Ranch, Eden, TX; PRT–05058B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), and addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Thirsty River Ranch, Eden, TX; PRT–05059B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Comanche Spring Ranch, New Iberia, LA; PRT–05055B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (Rucervus eldii), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Comanche Spring Ranch, New Iberia, LA; PRT–05056B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*) and scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period

Applicant: Yang Li, Philadelphia, PA; PRT–05176B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Society of Cincinnati, Cincinnati, OH; PRT–03413B

The applicant requests a permit for the export of bonobo (*Pan paniscus*), two animals, captive bred for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

B. Endangered Marine Mammals

Applicant: Dr. Graham Worthy, University of Central Florida, Orlando, FL; PRT–056326

The applicant requests renewal of the permit to take captive-held West Indian manatees (*Trichechus manatus*) and tissue specimens from stranded dead manatees for the purpose of scientific research on the physiological ecology of the manatee. This notification covers activities to be conducted by the applicant over a 5-year period. Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–12227 Filed 5–21–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N121; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
	Endangered Species		
65816A	Lewis Henderson	77 FR 24510; April 24, 2012	June 1, 2013.
71523A	Liberty Hill Land Partnership Ltd	77 FR 24510; April 24, 2012	June 1, 2012.
71768A	Chris Pannill	77 FR 24510; April 24, 2012	June 1, 2012.
71660A	Rattlesnake Springs Ranch	77 FR 24510; April 24, 2012	June 1, 2012.
68176A	Safeguard Investments Ltd	77 FR 24510; April 24, 2012	June 1, 2012.
72025A	Texana Ranch	77 FR 24510; April 24, 2012	June 1, 2012.
67537A	Dixon Land & Wildlife Co	77 FR 24510; April 24, 2012	June 1, 2012.
72017A	Hays City Ranch	77 FR 24510; April 24, 2012	June 1, 2012.
69106A	Lewis Henderson	77 FR 24510; April 24, 2012	June 1, 2012.
71521A	Liberty Hill Land Partnership Ltd	77 FR 24510; April 24, 2012	June 1, 2012.
71767A	Chris Pannill	77 FR 24510; April 24, 2012	June 1, 2012.
71533A	Patterson Energy Of Texas, L.L.C	77 FR 24510; April 24, 2012	June 1, 2012.
71445A	Pheenix Farms Exotics	77 FR 24510; April 24, 2012	June 1, 2012.
71661A	Rattlesnake Springs Ranch	77 FR 24510; April 24, 2012	June 1, 2012.
72023A	Texana Ranch	77 FR 24510; April 24, 2012	June 1, 2012.
816624	Charles Musgrave	77 FR 26779; May 7, 2012	June 20, 2012.
72630A	Ripley's Aquarium (Gatlinburg), L.L.C	77 FR 26779; May 7, 2012	June 20, 2012.
15387A	Wild Acres Ranch	77 FR 26779; May 7, 2012	June 20, 2012.
72654A	William Bean	77 FR 26779; May 7, 2012	February 27, 2013.
71354A	Canyon Exotic Game Ranch, L.L.C	77 FR 26779; May 7, 2012	June 21, 2012.
66614A	Robert Eaves	77 FR 26779; May 7, 2012	June 21, 2012.
72328A	Hays City Ranch	77 FR 26779; May 7, 2012	June 1, 2013.
69576A	Star B Property Company	77 FR 26779; May 7, 2012	June 21, 2012.
72653A	William Bean	77 FR 26779; May 7, 2012	June 21, 2012.
71823A	Blex Exchange III, L.P.	77 FR 26779; May 7, 2012	June 21, 2012.
71353A	Canyon Exotic Game Ranch, L.L.C	77 FR 26779; May 7, 2012	June 21, 2012.
66615A	Robert Eaves	77 FR 26779; May 7, 2012	June 21, 2012.
69575A	Star B Property Company	77 FR 26779; May 7, 2012	June 21, 2012.
723430	Micke Grove Zoo	77 FR 26779; May 7, 2012	July 11, 2012.
213382	Virginia Safari Park & Preservation Center, Inc	77 FR 26779; May 7, 2012	July 21, 2012.
72933A	James Bruner	77 FR 30547; May 23, 2012	June 29, 2012.
70438A	Randall Cupp	77 FR 30547; May 23, 2012	June 29, 2012.
73857A	Frank Deel	77 FR 30547; May 23, 2012	June 29, 2012.
71316A	DMK Ranching	77 FR 30547; May 23, 2012	June 29, 2012.
70234A	Jx2, LLC	77 FR 30547; May 23, 2012	June 29, 2012.
71496A	Carol Neunhoffer	77 FR 30547; May 23, 2012	June 29, 2012.
67083A	Selah Springs Ranch	77 FR 30547; May 23, 2012	June 29, 2012.
73612A	Twisted Oaks Ranch LLC	77 FR 30547; May 23, 2012	June 29, 2012.
804095	Brad Blevins	77 FR 30547; May 23, 2012	June 29, 2012.
72932A	James Bruner	77 FR 30547; May 23, 2012	June 29, 2012.
70436A	Randall Cupp	77 FR 30547; May 23, 2012	June 29, 2012.
73856A	Frank Deel	77 FR 30547; May 23, 2012	June 29, 2012.
71317A	DMK Ranching	77 FR 30547; May 23, 2012	June 29, 2012.
69145A	Jx2, LLC	77 FR 30547; May 23, 2012	June 29, 2012.
71497A	Carol Neunhoffer	77 FR 30547; May 23, 2012	June 29, 2012.
67084A	Selah Springs Ranch	77 FR 30547; May 23, 2012	June 29, 2012.
71664A	Sharbutt Land & Cattle	77 FR 30547; May 23, 2012	June 29, 2012.
73610A	Twisted Oaks Ranch LLC	77 FR 30547; May 23, 2012	June 29, 2012.
56870A	Carson Springs Wildlife Foundation	77 FR 30547; May 23, 2012	May 1, 2013.
018969	Center For Conservation Of Tropical Ungulates	77 FR 30547; May 23, 2012	July 17, 2012.
690989	Columbus Zoo And Aquarium	77 FR 30547; May 23, 2012	July 17, 2012.
750150	Richard Noble	77 FR 30547; May 23, 2012	July 17, 2012.
75409A	Andrew Barton	77 FR 34059; June 8, 2012	July 11, 2012.
75285A	Michael Ryckman	77 FR 34059; June 8, 2012	July 11, 2012.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
73017A	Desert Horn Safaris	77 FR 34059; June 8, 2012	July 16, 2012.
75407A	Texas Parks And Wildlife Department	77 FR 34059; June 8, 2012	July 16, 2012.
73016A	Desert Horn Safaris	77 FR 34059; June 8, 2012	July 16, 2012.
75297A	Dos Hijos Ranch—Operations, Inc	77 FR 34059; June 8, 2012	July 16, 2012.
701225	Naples Zoo, Inc.	77 FR 34059; June 8, 2012	July 16, 2012.
75408A	Texas Parks And Wildlife Department	77 FR 34059; June 8, 2012	July 16, 2012.
841281	Janell Knudsen	77 FR 34059; June 8, 2012	July 18, 2012.
75109A	Reigleman Enterprises	77 FR 34059; June 8, 2012	October 18, 2012.
75693A	Turtle Back Zoo	77 FR 34059; June 8, 2012	December 12, 2012.
050694	Loraine & John Shea	77 FR 36571; June 19, 2012	July 26, 2012.
76245A	Michael Cone	77 FR 36571; June 19, 2012	August 9, 2012.
75534A	Diamond G Of Morgan City LLC	77 FR 36571; June 19, 2012	August 9, 2012.
76246A	Michael Cone	77 FR 36571; June 19, 2012	August 9, 2012.
75404A	Diamond G Of Morgan City LLC	77 FR 36571; June 19, 2012	August 9, 2012.
76153A	Spirit Wild Productions, Ltd	77 FR 36571; June 19, 2012	August 14, 2012.
76154A	Spirit Wild Productions, Ltd	77 FR 36571; June 19, 2012	August 14, 2012.
77732A	Broken Spur Ranch LLC	77 FR 38652; June 28, 2012	August 10, 2012.
104625	J & R Outfitters	77 FR 38652; June 28, 2012	August 10, 2012.
77005A	Rancho Rasante Real, LLC	77 FR 38652; June 28, 2012	August 10, 2012.
77731A	Broken Spur Ranch LLC	77 FR 38652; June 28, 2012	August 10, 2012.
77003A	Rancho Rasante Real, LLC	77 FR 38652; June 28, 2012	August 10, 2012.
212762	Southern Tier Zoological Society, Inc	77 FR 38652; June 28, 2012	August 10, 2012.
78003A	Lykes Bros.	77 FR 41198; July 12, 2012	August 14, 2012.
78004A	Lykes Bros.	77 FR 41198; July 12, 2012	August 14, 2012.
755365	Safari West	77 FR 41198; July 12, 2012	August 14, 2012.
71824A	Marvin Turner	77 FR 41198; July 12, 2012	August 14, 2012.
71826A	Marvin Turner	77 FR 41198; July 12, 2012	August 15, 2012.
785246	Robert Blome	77 FR 44264; July 27, 2012	August 28, 2012.
79469A	Andy Nguyen	77 FR 44264; July 27, 2012	August 28, 2012.
79772A	Ay Sao	77 FR 44264; July 27, 2012	August 28, 2012.
01602B	Michael Tomb	78 FR 21628; April 11, 2013	May 14, 2013.
	Marine Mammals		
801652	U.S. Geological Survey, Alaska Science Center	78 FR 5481; January 25, 2013	May 10, 2013.
95406A	Karyn Rode, USGS	78 FR 12777; February 25, 2013	May 3, 2013.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–12228 Filed 5–21–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on June 11–12, 2013 at the South Interior Building Auditorium, 1951 Constitution Avenue NW., Washington, DC 20240. The meeting will be held in the first floor Auditorium. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

- Leadership Dialogue
- NSDI Strategic Plan
- Geospatial Platform
- OMB Circular A–16 Portfolio Management
- Landsat Advisory Group
- Subcommittee Reports

The meeting will include an opportunity for public comment on June 12. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the U.S. Geological Survey (703–648–6283, *amaher@usgs.gov*). Registrations are due by June 7, 2013. While the meeting will be open to the public, registration is required for entrance to the South Interior Building, and seating may be limited due to room capacity.

DATES: The meeting will be held from 8:30 a.m. to 5:30 p.m. on June 11 and from 8:30 a.m. to 4:00 p.m. on June 12.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting is available at *www.fgdc.gov/ngac.*

Dated: May 15, 2013.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. 2013–12197 Filed 5–21–13; 8:45 am]

BILLING CODE 4310–AM–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–476 and 731–TA–1179 (Final) (Remand)]

Multilayered Wood Flooring from China

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings

SUMMARY: The U.S. International Trade Commission (''Commission'') hereby gives notice of the court-ordered remand of its final determinations in Investigation Nos. 701–TA–476 and 731–TA–1179 (Final) concerning multilayered wood flooring (''MLWF'') from China. For further information concerning the conduct of these remand proceedings and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

DATES: *Effective Date:* May 17, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles, Office of Investigations, telephone 202–205–3187, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*http://www.usitc.gov).* The public record for these investigations may be viewed on the Commission's electronic docket (''EDIS'') at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. In December 2011, the Commission determined by a vote of four to two that an industry in the United States was materially injured by reason of imports of MLWF from China that were sold in the United States at less-than-fair value and subsidized by the Government of China. Swiff-Train Co.; Metropolitan Hardwood Floors, Inc.; BR Custom Surface; Real Wood Floors, LLC; Galleher Corp.; and DPR International, LLC, U.S. importers of the subject merchandise from China, contested the Commission's determination before the U.S. Court of International Trade (''CIT''). The CIT remanded certain issues to the Commission and affirmed all other aspects of the Commission's determinations. *Swiff-Train Co. et al.* v. *United States,* Slip. Op. 13–38 at 2, 19–20 (Ct. Int'l Trade Mar. 20, 2013).

Participation in the proceeding. Only those persons who were interested parties to the original investigations (*i.e.,* persons listed on the Commission Secretary's service list) and participated in the appeal proceedings before the CIT may participate in the remand proceedings. Such persons need not re-file their appearance notices or protective order applications to participate in the remand proceedings. Business proprietary information (''BPI'') referred to during the remand proceedings will be governed, as appropriate, by the administrative protective order issued in the original investigations. The Secretary will maintain a service list containing the names and addresses of all persons or their representatives who are parties to the remand proceedings, and the Secretary will maintain a separate list of those authorized to receive BPI under the administrative protective order during the remand proceedings.

Written submissions. As directed by the Court, the Commission is reopening the record in these remand proceedings for the limited purpose of issuing U.S. producer questionnaires to U.S. plywood manufacturers and obtaining their responses. The Commission is not otherwise reopening the record for the collection of new factual information. On June 28, 2013, the Commission will make available any new factual information obtained during the remand proceedings not already served to parties to the investigations (as identified by the public or BPI service list). The Commission will permit the parties to file written comments on any new factual information obtained during the remand proceedings and on the CIT's instructions for the Commission on remand

1. to analyze and reconsider ''its decision not to investigate domestic producers of hardwood plywood used for flooring''

2. to ''make findings on the issue of price suppression/price depression''

3. to further explain ''the impact the subject imports had on the domestic industry in light of {the} collapse of the housing market during the period of investigation'' and

4. to ''re-evaluate whether the subject imports were the 'but-for' cause of material injury to the domestic industry.''

Comments should be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material, inclusive of appendices or other such attachments. The parties may not submit any new factual information in their comments and may not address any issue other than those identified above. Any such comments must be filed with the Commission no later than July 12, 2013.

Parties are advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission. All written submissions, including those that contain BPI, must conform to the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. *See* 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Issued: May 17, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–12153 Filed 5–21–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR § 1301.34(a), this is notice that on December 20, 2011, Wildlife Laboratories Inc., 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Etorphine (except HCl) (9056), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the above listed controlled substance for sale to zoo and wildlife veterinarian zoos and, for use with other animal and wildlife applications.

Any bulk manufacturers who are presently, or are applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR § 1301.43 and in such form as prescribed by 21 CFR § 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 21, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR § 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: May 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–12109 Filed 5–21–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Alltech Associates, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on March 28, 2013, Alltech Associates, Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import these controlled substances for the manufacture of reference standards.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I and II, which falls under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR § 1301.43 and in such form as prescribed by 21 CFR § 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 21, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic classes of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: May 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–12120 Filed 5–21–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21, Code of Federal Regulations 1301.34 (a), this is notice that on April 10, 2013, Arizona Department of Corrections, ASPC-Florence, 1305 E. Butte Avenue, Florence, Arizona 85132, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Pentobarbital (2270), a basic class of controlled substance listed in schedule II.

The facility intends to import the above listed controlled substance for legitimate use. Supplies of this particular controlled substance are inadequate and are not available in the form needed within the current domestic supply of the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance listed in schedules I and II, which falls under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 21, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted

in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: May 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–12117 Filed 5–21–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Meridian Medical Technologies

By Notice dated March 7, 2012, and published in the **Federal Register** on March 13, 2013, 78 FR 15974, Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company manufactures a product containing morphine in the United States. The company exports this product to customers around the world. The company has been asked to ensure that its product sold to European customers meets standards established by the European Pharmacopeia, which is administered by the Directorate of the Quality of Medicines (EDQM). In order to ensure that its product will meet European specifications, the company seeks to import morphine supplied by EDQM to use as reference standards. This is the sole purpose for which the company will be authorized by DEA to import morphine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Meridian Medical Technologies to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Meridian Medical Technologies to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR § 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: May 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–12121 Filed 5–21–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Alltech Associates, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 28, 2013, Alltech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2C-T-7 (2,5-Dimethoxy-4-(n)-Propylthiophenethylamine) (7348)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2C-T-2 (2-(4-Ethylthio-2,5-dimethoxyphenyl)ethanamine)(7385)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-N-N-dimethyltryptamine (7431)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I

Drug	Schedule
2C-E (2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine) (7509)	I
2C-H (2-(2,5-Dimethoxyphenyl)ethanamine) (7517)	I
2C-1(2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine) (7518)	I
2C-C (2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (7519)	I
2C-T-4 (2-(4-isopropylthio)-2,5-dimethoxyphenyl) ethanamine) (7532)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Ecgonine (9180)	II
Meperidine intermediate-B (9233)	II
Noroxymorphone (9668)	II

The company plans to manufacture high purity drug standards used for analytical applications only in clinical, toxicological, and forensic laboratories.

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 July 22, 2013.

Dated: May 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–12114 Filed 5–21–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application, Austin Pharma, Llc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 28, 2013, Austin Pharma, LLC., 811 Paloma Drive, Suite C, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Marihuana (7360), a basic class of controlled substance listed in schedule I.

The company plans to manufacture bulk active pharmaceutical ingredients (APIs) for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. No other activity for this drug code is authorized for this registration.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, 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 July 22, 2013.

Dated: May 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–12115 Filed 5–21–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application, Lin Zhi International, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 3, 2013, Lin Zhi International, Inc., 670 Almanor Avenue, Sunnyvale, California 94085, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymeth- amphetamine (7405).	
Cocaine (9041)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances as bulk reagents for use in drug abuse testing.

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 July 22, 2013.

Dated: May 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–12110 Filed 5–21–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Siegfried (Usa), Llc.

By Notice dated November 19, 2012, and published in the **Federal Register** on November 27, 2012, 77 FR 70825, Siegfried (USA), LLC., 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Dihydromorphine (9145)	I
Hydromorphinol (9301)	I
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siegfried (USA), LLC., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Siegfried (USA), LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR § 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–12116 Filed 5–21–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at *reginfo.gov* (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before July 22, 2013.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

I. Supplementary Information

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice Requirements of the Health Care Continuation Coverage Provisions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0123.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 649,000.

Responses: 15,662,333.

Estimated Total Burden Hours: 503,815.

Estimated Total Burden Cost (Operating and Maintenance): $20,217,778.

Description: The continuation coverage provisions of section 601 through 608 of the Employee Retirement Income Security Act of 1974 (ERISA) (and parallel provisions of the Internal Revenue Code (Code)) generally require group health plans to offer qualified beneficiaries the opportunity to elect continuation coverage following certain events that would otherwise result in the loss of coverage. Continuation coverage is a temporary extension of the qualified beneficiary's previous group health coverage. The right to elect continuation coverage allows individuals to maintain group health coverage under adverse circumstances and to bridge gaps in health coverage that otherwise could limit their access to health care. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides the Secretary of Labor (the Secretary) with authority under section 608 of ERISA to carry out the continuation coverage provisions. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage. The ICR contained in these rules was approved by the Office of Management and Budget (OMB) under OMB Control Number 1210–0123, which is currently scheduled to expire on September 30, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Model Employer CHIP Notice.

Type of Review: Extension of a currently approved information collection.

OMB Number: 1210–0137.

Affected Public: Individuals or households; business or other for-profit institutions; not-for-profit institutions.

Respondents: 7,056,000.

Responses: 203,795,000.

Estimated Total Burden Hours: 1,053,000.

Estimated Total Burden Cost (Operating and Maintenance): $25,271,000.

Description: On February 4, 2009, President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA, Pub. L. 111–3). Under ERISA section 701(f)(3)(B)(i)(I), PHS Act section 2701(f)(3)(B)(i)(I), and section 9801(f)(3)(B)(i)(I) of the Internal Revenue Code, as added by CHIPRA, an employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act (SSA), or child health assistance under a State child health plan under title XXI of the SSA, in the form of premium assistance for the purchase of coverage under a group health plan, is required to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and CHIP for health coverage of the employee or the employee's dependents.

ERISA section 701(f)(3)(B)(i)(II) requires the Department of Labor to provide employers with model language for the Employer CHIP Notices to enable them to timely comply with this requirement. This ICR relates to the Model Employer CHIP Notice, which was approved by OMB under OMB Control Number 1210–0137 and currently scheduled to expire on September 30, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures for Participant Directed Individual Account Plans Under ERISA Section 404(c).

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0090.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 483,000.

Responses: 738,206,912.

Estimated Total Burden Hours: 6,583,000.

Estimated Total Burden Cost (Operating and Maintenance): $ 221,000,000.

Description: Section 404(c) of ERISA provides that, if an individual account pension plan permits a participant or beneficiary to exercise control over assets in his or her account and the participant or beneficiary in fact exercises such control, the participant or beneficiary shall not be deemed to be a fiduciary by such exercise of control and no person otherwise a fiduciary shall be liable for any loss or breach that results from the participant's or beneficiary's exercise of control.

The Department's regulation at 29 CFR 2550.404c–1 describes the circumstances in which a participant or beneficiary will be considered to have exercised independent control over the assets in his or her individual account as contemplated in section 404(c). The regulation specifies information that must be made available to participants or beneficiaries in order for them to exercise independent control over the assets in their individual accounts. The regulation provides that the relief from fiduciary liability specified in section 404(c) is not available with respect to a transaction undertaken by a participant or beneficiary unless the specific information is provided to the participant or beneficiary. The ICR contained in this rule was approved by OMB under OMB Control Number 1210–0090, which is scheduled to expire on October 31, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0140.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 2,200,000.

Responses: 56,457,000.

Estimated Total Burden Hours: 1,077,800.

Estimated Total Burden Cost (Operating and Maintenance): $561,000.

Description: Section 1251 of the Patient Protection and Affordable Care Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. To maintain its status as a grandfathered health plan, the interim final regulations (29 CFR 2590.715–1251(a)(3)) require the plan to maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

The interim final regulations (29 CFR 2590.715–1251(a)(2)) also require a grandfathered health plan to include a statement in any plan material provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Act, that being a grandfathered health plan means that the plan does not include certain consumer protections of the Act, and providing contact information for participants to direct questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status and to file complaints. The ICR contained in this interim final rule was approved by OMB under OMB Control Number 1210–0140, which is currently scheduled to expire on November 30, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 92–6: Sale of Individual Life Insurance or Annuity Contracts By a Plan.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0063.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 21,533.

Responses: 334,661.

Estimated Total Burden Hours: 14,745.

Estimated Total Burden Cost (Operating and Maintenance): $101,670.

Description: PTE 92–6 exempts from the prohibited transaction restrictions of ERISA the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, other employee benefit plans, owner-employees or shareholder-employees. In the absence of this exemption, certain aspects of

these transactions might be prohibited by section 406 of ERISA.

Among other conditions, PTE 92–6 requires that pension plans inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, another plan, an owner-employee, or a shareholder employee. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from OMB under OMB Control No. 1210–0063. The OMB approval is currently scheduled to expire on December 31, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Regulation Relating to Loans to Plan Participants and Beneficiaries Who Are Parties In Interest With Respect to The Plan.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0076.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 1,900.

Responses: 1,900.

Estimated Total Burden Hours: 0.

Estimated Total Burden Cost (Operating and Maintenance): $673,000.

Description: ERISA prohibits a plan fiduciary from causing the plan to engage in a transaction if he knows or should know that such transaction constitutes direct or indirect loan or extension of credit between the plan and a party in interest. ERISA section 408(b)(1) exempts from this prohibition loans from a plan to parties in interest who are participants and beneficiaries of the plan, provided that certain requirements are satisfied. In final regulations published in the **Federal Register** on July 20, 1989, (54 FR 30520), the Department provided additional guidance on section 408(b)(1)(C), which requires that loans be made in accordance with specific provisions in the plan. The ICR contained within this rule was approved by OMB under OMB Control Number 1210–0076, which is scheduled to expire on December 31, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 91–55: Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0079.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 3.

Responses: 10,286.

Estimated Total Burden Hours: 349.

Estimated Total Burden Cost (Operating and Maintenance): $3,125.

Description: PTE 91–55 permits purchases and sales by certain ''individual retirement accounts,'' as defined in Internal Revenue Code section 408 (IRAs) of American Eagle bullion coins (''Coins'') in principal transactions from or to broker-dealers in Coins that are ''authorized purchasers'' of Coins in bulk quantities from the United States Mint and which are also ''disqualified persons,'' within the meaning of Code section 4975(e)(2), with respect to IRAs. The exemption also describes the circumstances under which an interest free extension of credit in connection with such sales and purchases is permitted. In the absence of an exemption, such purchases and sales and extensions of credit would be impermissible under ERISA.

Among other conditions, the exemption requires certain information related to covered transactions in Coins to be disclosed by the authorized purchaser to persons who direct the transaction for the IRA. Currently, it is standard industry practice that most of this information is provided to persons directing investments in an IRA when transactions in Coins occur. The exemption also requires that the disqualified person maintain for a period of at least six years such records as are necessary to allow accredited persons, as defined in the exemption, to determine whether the conditions of the transaction have been met. Finally, an authorized purchaser must provide a confirmation statement with respect to each covered transaction to the person who directs the transaction for the IRA. The requirements constitute information collections within the meaning of the PRA, for which the Department has obtained approval from OMB under OMB Control No. 1210–0079. The OMB approval is currently scheduled to expire on December 31, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 85–68: Permit Employee Benefit Plans to Invest in Customer Notes of Employers.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0094.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 325.

Responses: 325.

Estimated Total Burden Hours: 0.

Estimated Total Burden Cost (Operating and Maintenance): $1.

Description: Pursuant to section 408 of ERISA, the Department has authority to grant an exemption from the prohibitions of sections 406 and 407(a) if it can determine that the exemption is administratively feasible, in the interest of participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. PTE 85–68 describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. Specifically, the exemption requires that the employer provide a written guarantee to repurchase a note which becomes more than 60 days delinquent, that such notes be secured by a perfected security interest in the property financed by the note, and that the collateral be insured. The exemption requires records pertaining to the transaction to be maintained for a period of six years for the purpose of ensuring that the transactions are protective of the rights of participants and beneficiaries. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from OMB under OMB Control No. 1210–0094. The OMB approval is currently scheduled to expire on December 31, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Default Investment Alternatives under Participant Directed Individual Account Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0132.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 648,000.

Responses: 83,358,375.

Estimated Total Burden Hours: 782,000.

Estimated Total Burden Cost (Operating and Maintenance): $32,116,000.

Description: Section 404(c) of ERISA states that participants or beneficiaries who can hold individual accounts under their pension plans, and who can exercise control over the assets in their

accounts ''as determined in regulations of the Secretary [of Labor]'' will not be treated as fiduciaries of the plan. Moreover, no other plan fiduciary will be liable for any loss, or by reason of any breach, resulting from the participants' or beneficiaries exercise of control over their individual account assets.

The Pension Protection Act (PPA), Public Law 109–280, amended ERISA section 404(c) by adding subparagraph (c)(5)(A). The new subparagraph says that a participant in an individual account plan who fails to make investment elections regarding his or her account assets will nevertheless be treated as having exercised control over those assets so long as the plan provides appropriate notice (as specified) and invests the assets ''in accordance with regulations prescribed by the Secretary [of Labor].'' Section 404(c)(5)(A) further requires the Department of Labor (Department) to issue corresponding final regulations within six months after enactment of the PPA. The PPA was signed into law on August 17, 2006.

The Department of Labor issued a final regulation under ERISA section 404(c)(5)(A) offering guidance on the types of investment vehicles that plans may choose as their ''qualified default investment alternative''(QDIA). The regulation also outlines two information collections. First, it implements the statutory requirement that plans provide annual notices to participants and beneficiaries whose account assets could be invested in a QDIA. Second, the regulation requires plans to pass certain pertinent materials they receive relating to a QDIA to those participants and beneficiaries with assets invested in the QDIA as well to provide certain information on request. The ICRs are approved under OMB Control Number 1210–0132, which is scheduled to expire on December 31, 2013.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: May 9, 2013.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2013–12191 Filed 5–21–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection: ETA–5130 Benefit Appeals Report; Extension Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A); 3506(b)(1)(2)(3)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 22, 2013.

ADDRESSES: Send comments to Stephanie Garcia, Office of Unemployment Insurance, Employment and Training Administration, U.S. Department of Labor, Room S–4524, 200 Constitution Avenue NW., Washington, DC 20210, telephone number (202) 693–3207 (*this is not a toll-free number*) or by email: *Garcia.Stephanie@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ETA–5130, Benefit Appeals Report, contains information on the number of unemployment insurance appeals and the resultant decisions classified by program, appeals level, cases filed and disposed of (workflow), and decisions by level, appellant, and issue. The data on this report are used by the Department of Labor to monitor the benefit appeals process in the State Workforce Agencies (SWAs) and to develop any needed plans for remedial action. The data are also needed for workload forecasts and to determine administrative funding. If this information were not available, developing problems might not be discovered early enough to allow for timely solutions and avoidance of time consuming and costly corrective action.

II. Review Focus

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA–5130 Benefit Appeals Report, which expires January 31, 2014. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

III. Current Actions

Type of Review: Extension without changes.

Title: Benefit Appeals Report.

OMB Number: 1205–0172.

Affected Public: State Workforce Agencies.

Cite/Reference/Form/etc: Social Security Act, Section 303(a)(6).

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 53 respondents × 12 responses per year = 636 responses for the regular program, 53 respondents × 12 responses per year = 636 responses for the Emergency Unemployment Compensation 2008 program, 53 respondents × 12 responses per year = 636 responses for the Federal-State

extended benefit program for an estimated total of 1,908 responses.

Average Estimated Response Time: 1 hour.

Total Annual Estimated Burden Hours: 1,908 hours (636 hours for the ETA 5130 Regular report + 636 hours for the ETA 5130 Federal-State Extended Benefits report + 636 hours for the ETA 5130 Emergency Unemployment Compensation Report).

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Signed in Washington, DC, this 15th day of May, 2013.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2013–12098 Filed 5–21–13; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0013]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of FACOSH meeting and member appointments.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet on June 6, 2013, in Washington, DC. This **Federal Register** notice also announces the appointment of seven individuals to serve on FACOSH.

DATES: *FACOSH meeting:* FACOSH will meet from 1 to 4:30 p.m., Thursday, June 6, 2013.

Submission of comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to speak at the FACOSH meeting, speaker presentations, and requests for special accommodations to attend the meeting by May 23, 2013.

ADDRESSES: *FACOSH meeting:* FACOSH will meet in Rooms S–4215 A–C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You may submit comments, requests to speak at the FACOSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions;

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648; or

Mail, express delivery, hand delivery, or messenger/courier service: You may submit materials to the OSHA Docket Office, Docket No. OSHA–2013–0013, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350, (OSHA's TTY (877) 889–5627). Deliveries (hand, express mail, messenger/courier service) are accepted during the Department's and the OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t., weekdays.

Requests for special accommodations to attend the FACOSH meeting: You may submit requests for special accommodations by telephone, email, or hard copy to Ms. Frances Owens, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *owens.frances@dol.gov.*

Instructions: All submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2013–0013). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger/courier service. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section below.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information provided, without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information, such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general information: Mr. Francis Yebesi, Director, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2122; email *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION:

FACOSH Meeting

FACOSH will meet on June 6, 2013, in Washington, DC. Some FACOSH members may attend the meeting electronically. The meeting is open to the public.

The tentative agenda for the FACOSH meeting includes:

- Updates from FACOSH subcommittees; and
- OPM status report regarding changes to GS–0018 job series.

FACOSH is authorized by 5 U.S.C. 7902; section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668); and Executive Order 11612, as amended, to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health (OSH) of Federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage each Federal Executive Branch Department and agency to establish and maintain effective OSH programs.

OSHA transcribes and prepares detailed minutes of FACOSH meetings. The Agency puts transcripts, minutes, and other materials presented at the meeting in the public record of the FACOSH meeting, which is posted at *http://www.regulations.gov.*

Public Participation, Submissions, and Access to Public Record

FACOSH meetings: FACOSH meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance, 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification to enter the building. For additional information about building security measures, and requests for special accommodations for attending the FACOSH meeting, please contact Ms. Owens (see **ADDRESSES** section).

Submission of requests to speak and speaker presentations. You may submit a request to speak to FACOSH by one

of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time you request to speak;
- The interest you represent (e.g., organization name), if any; and,
- A brief outline of your presentation.

PowerPoint speaker presentations and other electronic materials must be compatible with Microsoft Office 2010 formats. The FACOSH chair may grant requests to address FACOSH at his discretion and as time and circumstances permits.

Submission of written comments. You also may submit written comments, including data and other information, using any of the methods listed in the **ADDRESSES** section. Your submissions, including attachments and other materials, must identify the agency name and the OSHA docket number for this notice (Docket No. OSHA–2013–0013). You may supplement electronic submissions by uploading documents electronically. If you wish to submit hard copies of supplementary documents instead, you must submit them to the OSHA Docket Office using the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date, and docket number. OSHA will provide copies of your submissions to FACOSH members prior to the meeting.

Because of security-related procedures, submitting comments, requests to speak, and speaker presentations by regular mail may cause a significant delay in their receipt. For information about security procedures concerning submissions by hand, express delivery, and messenger/courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

Access to submissions and public record. OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the FACOSH public docket without change and those documents may be available online at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting certain personal information, such as Social Security numbers and birthdates.

OSHA also puts meeting transcripts, minutes, workgroup reports, and documents presented at the FACOSH meeting in the public record of the FACOSH meeting.

To read or download documents in the public record, go to Docket No. OSHA–2013–0013 at *http://www.regulations.gov*. Although all meeting documents are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted material) are not publicly available to read or download through that Web page. All meeting documents, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regualtions.gov* to make submissions and to access the public record of the FACOSH meeting is available at that Web page. Please contact the OSHA Docket Office for information about materials not available through that Web page and for assistance for making submissions and obtaining documents in the public record.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information about FACOSH, also is available at OSHA's Web page at *http://www.osha.gov*.

FACOSH Appointments

FACOSH membership is comprised of sixteen members; eight representing Federal agency management, and eight from labor organizations that represent Federal employees. Management members are typically their agency's Designated Agency Safety and Health Official. Labor members generally have responsibility for OSH-related matters within their organizations. In order to maintain the continuity of FACOSH, OSHA appoints members to staggered terms lasting up to three years. If a member becomes unable to serve, resigns, or is removed before his or her term expires, the Secretary may appoint a new member who represents the same interest (management or labor) to serve the remainder of the unexpired term. In making appointments, the Secretary may consider qualified individuals nominated in response to the **Federal Register** notice, as well as other qualified individuals. The Secretary may reappoint members to successive terms.

OSHA published a request for FACOSH nominations in the **Federal Register** (77 FR 39743 (7/5/2012)). OSHA received 16 nominations. On February 11, 2013, the Acting Secretary re-appointed the following three individuals to FACOSH:

- Mr. Curtis Bowling, U.S. Department of Defense (management representative);
- Mr. William Dougan, National Federation of Federal Employees (labor representative); and
- Ms. Deborah Kleinberg, Seafarers International Union/National Maritime Union (labor representative).

In addition, the Acting Secretary appointed the following four individuals to new terms on FACOSH:

- Dr. Joe Hoagland, Tennessee Valley Authority (management representative);
- Dr. Gregory Parham, U.S. Department of Agriculture (management representative);
- Ms. Lola Ward, National Transportation Safety Board (management representative); and
- Ms. Irma Westmoreland, National Nurses United (labor representative).

All seven individuals have been appointed to serve three-year terms commencing on the date of appointment, and ending on December 31, 2015.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the OSH Act (29 U.S.C. 668); 5 U.S.C. 7902; the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2); 41 CFR Part 102–3; section 1–5 of Executive Order 12196 (45 CFR 12629 (2/27/1980)); and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on May 17, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–12217 Filed 5–21–13; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Funding Availability for Calendar Year 2013 Grant Funds; Request for Applications: 2013 Grant Funds Under the Hurricane Sandy Disaster Relief Grant Program

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to low-income people.

This Request for Applications (RFA) announces the availability of grant funds and is soliciting grant applications from current LSC recipients that provide legal services in service areas that have been federally-declared as disaster areas resulting from Hurricane Sandy. The Disaster Relief Appropriations Act, 2013, Public Law 113–2, 127 Stat. 4, includes $1 million for LSC to provide assistance to low-

income people in areas significantly affected by Hurricane Sandy. The amount of the appropriation has been reduced by $50,000 because of sequestration. LSC anticipates providing the full $950,000 through grants awarded pursuant to this process. The funds must be expended by grantees within twenty-four (24) months following the obligation of the funds.

DATES: This RFA is available the week of May 20, 2013. Legal Services Corporation must receive all applications on or before June 21, 2013, 11:59 p.m., E.D.T. Complete applications for this grant program must be submitted using the online system at *http://grants.lsc.gov/apply-for-funding/disaster-relief-grants.*

ADDRESSES: Office of Program Performance, Legal Services Corporation, 3333 K Street NW., Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: John Eidleman, Office of Program Performance, by email at *sandydisaster@lsc.gov,* by phone at (202) 295–1500, or visit the LSC grants Web site at *www.grants.lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC will only accept applications from current LSC recipients that provide legal services in those states significantly affected by Hurricane Sandy and the designated disaster areas set out in the Major Disaster Declarations issued for the incident period of October 26, 2012 to November 8, 2012, which is available at *http://www.fema.gov/disasters.* Awards are intended to provide the mobile resources, technology, and disaster pro bono volunteer coordinators necessary to provide storm-related legal services to the LSC-eligible client population in the areas significantly affected by Hurricane Sandy. The application guidelines will be made available at *http://grants.lsc.gov/apply-for-funding/disaster-relief-grants* the week of May 20, 2013.

Dated: May 16, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–12119 Filed 5–21–13; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Notice of Funding Availability for Calendar Year 2013 Grant Funds; Request for Applications: 2013 Disaster Relief Emergency Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to low-income Americans.

This Request for Applications (RFA) announces the availability of $250,000 in LSC emergency grant funds and is soliciting grant applications from current LSC recipients located in a federally-declared disaster area seeking financial assistance to mitigate damage sustained and who have experienced a surge in demand for legal services as the result of Hurricane Sandy. Applications for these funds must be made in tandem with applications for the Disaster Relief Appropriations Act, 2013, Public Law 113–2, 127 Stat. 4. The recipients should submit both applications at the same time and demonstrate how the activities described in each application complement the other.

DATES: The RFA is available the week of May 20, 2013. Legal Services Corporation must receive all applications on or before June 21, 2013, 11:59 p.m., E.D.T. Other key application and filing dates, including the dates for filing grant applications, are published at *www.grants.lsc.gov/resources/notices.*

ADDRESSES: Office of Program Performance, Legal Services Corporation, 3333 K Street NW., Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: John Eidleman, Office of Program Performance, by email at *disasteremergency@lsc.gov,* by phone at (202) 295–1500, or visit the LSC grants Web site at *www.grants.lsc.gov.*

SUPPLEMENTARY INFORMATION:

On occasion, LSC makes available special funding to help meet the emergency needs of programs in disaster areas. See *http://grants.lsc.gov/apply-for-funding/disaster-relief-grants.* When funding is available, only current LSC recipients in federally-declared disaster areas, as identified by the Federal Emergency Management Agency (FEMA), are eligible to apply for such emergency funds. Information on federally-declared disaster areas is available at *http://www.fema.gov/disasters.*

At this time, LSC is making available emergency grant funds for current LSC recipients in federally-declared disaster areas resulting from Hurricane Sandy. The application guidelines will be made available at *http://grants.lsc.gov/apply-for-funding/disaster-relief-grants* the week of May 20, 2013.

Dated: May 16, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–12118 Filed 5–21–13; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on May 28, 2013. The meeting will commence at 4:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Discussion of fundraising policies
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in

order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: May 20, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–12319 Filed 5–20–13; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 21, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (N1–145–12–1, 3 items, 3 temporary items). Records related to the administration of the Government Performance and Results Act.

2. Department of the Army, Agency-wide (N1–AU–10–103, 20 items, 20 temporary items). Master files of several electronic information systems used to track procurement actions in support of force deployments.

3. Department of Commerce, Bureau of the Census (N1–29–11–1, 31 items, 27 temporary items). Records of the Foreign Trade Division such as foreign trade procedures memorandums, periodic division reports, and data processing records such as system processing files, import/export trade statistical operations production processing records, and final net level data files. Proposed for permanent retention are foreign trade data reports and products, research project planning files, and subject files maintained by the Division Chief and Deputy Division Chief.

4. Department of Defense, Defense Commissary Agency (N1–506–10–1, 5 items, 5 temporary items). Web content and management records related to the agency's internal and external Web sites.

5. Department of Defense, Defense Commissary Agency (N1–506–11–1, 13 items, 13 temporary items). Records relating to the agency's environmental management program. Included are records related to monitoring, compliance, management review, planning, procedures, organizational structure, and communications.

6. Department of Defense, Defense Contract Management Agency (N1–558–10–9, 27 items, 22 temporary items). Records related to corporate-level operations and mission-related programs. Included are management control plans, international program correspondence files, foreign visitor records, internal reviews, records of terminated audits, budget and procurement records, and non-mandatory agency instructions. Proposed for permanent retention are records of significant high-level decisions and actions, records of high-level oversight reviews, and mandatory mission-related agency instructions.

7. Department of Defense, Defense Finance and Accounting Service (DAA–0507–2013–0002, 1 item, 1 temporary item). Forms, rosters, agendas, handouts, and similar records pertaining to conference planning.

8. Department of Defense, Defense Logistics Agency (DAA–0361–2013–0002, 1 item, 1 temporary item). Master files of an electronic information system that manages reimbursements and other miscellaneous payments.

9. Department of Defense, Office of the Secretary of Defense (DAA–0330–2013–0005, 1 item, 1 temporary item). Master files of an electronic information system used to track sexual assault cases.

10. Department of Homeland Security, Agency-wide (DAA–0563–2013–0001, 11 items, 11 temporary items). Records of the department and its component agencies including biometric and limited biographic information used for national security, law enforcement, immigration, and other mission-related functions.

11. Department of Homeland Security, U.S. Coast Guard (DAA–0026–2013–0002, 3 items, 3 temporary items). Minutes, annual reports, and district office data for Harbor Safety Committees.

12. Department of Homeland Security, U.S. Coast Guard (DAA–0026–2013–0004, 4 items, 4 temporary items). Records of seamen licensing and certification examinations.

13. Department of Homeland Security, U.S. Coast Guard (DAA–0026–2013–0005, 4 items, 4 temporary items). Master files of an electronic information system supporting vessel security activities and operations planning and monitoring.

14. Department of Homeland Security, U.S. Coast Guard (DAA–0026–2013–0006, 2 items, 2 temporary items). Credentialing and training records related to health care administration.

15. Department of State, Bureau of Economic and Business Affairs (DAA–0059–2013–0001, 4 items, 2 temporary items). License and export recommendation case files. Proposed for permanent retention are policy files.

16. Department of State, Bureau of Educational and Cultural Affairs (DAA–0059–2012–0003, 5 items, 4 temporary items). Records of the Office of Global Educational Programs, including grant files, reference files, and informational publications. Proposed for permanent retention is the office's annual statistical publication.

17. Department of State, Bureau of Political-Military Affairs (N1–59–11–16, 9 items, 5 temporary items). Records of the Office of Weapons Removal and Abatement including background and reference materials, working files, grant files, and general correspondence. Proposed for permanent retention are publications, policy files, project files, and interagency working group files.

18. Consumer Financial Protection Bureau, Agency-wide (N1–587–12–13, 7 items, 5 temporary items). Records of the Legal Division including memorandums, hearing files, and administrative records. Proposed for permanent retention are historically significant memorandums and hearing files.

19. Environmental Protection Agency, Office of Water (DAA–0412–2013–0003, 2 items, 1 temporary item). Inputs of an electronic information system used for the regulation of wells. Proposed for permanent retention are the master files of the electronic information system.

20. Federal Reserve System, Agency-wide (DAA–0082–2013–0001, 2 items, 2 temporary items). Routine security surveillance and identification card records.

21. Office of the Director of National Intelligence, Office of the Program Manager of the Information Sharing Environment (N1–576–11–10, 11 items, 3 temporary items). Records include Web sites and non-substantive drafts and working papers. Proposed for permanent retention are implementation plans, final reports and sharing agreements, daily calendars, external speeches and briefings, records of boards and working groups, legislation recommendations to Congress, and substantive working papers.

Dated: May 14, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–12210 Filed 5–21–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL MEDIATION BOARD

Submission for OMB Review; Comment Request

AGENCY: National Mediation Board (NMB).

SUMMARY: The Director, Office of Administration, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, e.g. new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Investigation of Representation Dispute and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 17, 2013.

June D.W. King,

Director, Office of Administration, National Mediation Board.

Application for Investigation of Representation Dispute

Type of Review: Extension.

Title: Application for Investigation of Representation Dispute.

OMB Number: 3140–0001.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 68 annually.

Burden Hours: 17.00.

Abstract: When a dispute arises among a carrier's employees as to who will be their bargaining representative, the National Mediation Board (NMB) is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the NMB has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.2, provides that applications for the services of the NMB under Section 2, Ninth, to investigate representation disputes may be made on printed forms secured from the NMB's Office of Legal Affairs or on the Internet at *http://www.nmb.gov/representation/rapply.html.* The application requires the following information: The name of the carrier involved; the name or description of the craft or class involved; the name of the petitioning organization or individual; the name of the organization currently representing the employees, if any; the names of any other organizations or representatives involved in the dispute; and the estimated number of employees in the craft or class involved. This basic information is essential in providing the NMB with the details of the dispute so that it can determine what resources will be required to conduct an investigation.

The extension of this form is necessary considering the information is used by the Board in determining such matters as how many staff will be required to conduct an investigation and what other resources must be mobilized to complete our statutory responsibilities. Without this information, the Board would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Denise Murdock, NMB, 1301 K Street NW., Suite 250 E, Washington, DC 20005 or addressed to the email address *murdock@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D.W. King at 202–692–5010 or via internet address *king@nmb.gov.* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2013–12200 Filed 5–21–13; 8:45 am]

BILLING CODE 7550–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at Duke University by the Division of Materials Research (DMR) #1203.

Dates & Times: June 13, 2013, 7:15 a.m.–6:45 p.m.

Place: Duke University, Durham, North Carolina.

Type of Meeting: Part open.

Contact Person: Dr. Sean L. Jones, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–2986.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at Duke University.

Agenda: Thursday, June 13, 2013.

7:15 a.m.–9:00 a.m. Closed—Executive Session.

9:00 a.m.–3:00 p.m. Open—Review of the Duke MRSEC.

3:00 p.m.–6:45 p.m. Closed—Executive Session.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 16, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–12095 Filed 5–21–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7001; NRC–2013–0099]

United States Enrichment Corporation, Paducah Gaseous Diffusion Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Certificate renewal request and opportunity to comment.

SUMMARY: By letter dated April 2, 2013, the United States Enrichment Corporation (USEC) submitted its Application for Renewal of its Certificate of Compliance (CoC) for the Paducah Gaseous Diffusion Plant (PGDP). The existing CoC (No. GDP–1) authorizes operation of a uranium enrichment facility in Paducah, Kentucky. The Certificate currently has an expiration date of December 31, 2013. The USEC requests that the U.S. Nuclear Regulatory Commission (NRC) renew the Certificate for a 5-year period, with an expiration date of December 31, 2018.

DATES: Submit comments by June 21, 2013. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0099. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and

Submitting Comments'' in the SUPPLEMENTARY INFORMATION section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0099 when contacting the NRC about the availability of information regarding USEC's renewal request. You may access information related to this request, which the NRC possesses and is publicly-available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0099.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for USEC's renewal request is provided in Section III below.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0099 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

FOR FURTHER INFORMATION CONTACT: Mr. Osiris Siurano-Perez, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3117; email: *Osiris.Siurano-Perez@nrc.gov.*

II. Discussion

By letter dated April 2, 2013, USEC submitted its Application for Renewal of its, CoC for the PGDP, in accordance with Part 76 of Title 10 of the *Code of Federal Regulations* (10 CFR). The existing CoC (No. GDP–1) authorizes operation of a uranium enrichment facility in Paducah, Kentucky, using the gaseous diffusion process. The USEC requests that the NRC renew its Certificate for a 5-year period. If granted, the Certificate renewal would authorize USEC to continue operations until December 31, 2018.

The NRC issued the initial certificate of compliance for PGDP on November 26, 1996, and assumed regulatory oversight for the plant on March 3, 1997. The PGDP was last issued a renewed CoC on December 31, 2008, and, by its terms, this Certificate will expire on December 31, 2013. The USEC's renewal request is for a 5-year period, extending from the current expiration date of December 31, 2013, to December 31, 2018. The USEC's application for renewal is based on its previous Application (USEC–01), as revised through Revision 138 dated April 1, 2013. No additional changes to the application are requested.

If the NRC approves the request, the PGDP Certificate will be renewed for a 5-year period, with an expiration date of December 31, 2018. However, before approving the request, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The required findings will be documented in a Compliance Evaluation Report.

In accordance with 10 CFR 76.39, the NRC will conduct a public meeting, in the vicinity of the PGDP, in July of 2013. Notice of the meeting will be posted on the NRC Web site, *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Following evaluation of USEC's application for renewal and any public comments received, the NRC staff will issue a written Director's decision and publish a notice of the decision in the **Federal Register.** Upon publication of the notice of decision, any person whose interest may be affected may then request review of the decision within 30 days, pursuant to 10 CFR 76.62(c) or 76.64(d), whichever applies.

III. Further Information

Copies of USEC's Certificate renewal request (except for classified and proprietary portions which are withheld in accordance with 10 CFR 2.390, ''Availability of Public Records'') are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html,* accession number ML13105A010. Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Dated at Rockville, Maryland this 10th day of May, 2013.

For the Nuclear Regulatory Commission,

Osiris Siurano-Perez,

Project Manager, Uranium Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–12186 Filed 5–21–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of May 20, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 20, 2013

Monday, May 20, 2013

2:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

Additional Information

By a vote of 5–0 on May 17, 2013, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Discussion of Management

and Personnel Issues be held with less than one week notice to the public. The meeting is scheduled on May 20, 2013.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: May 17, 2013

Pamela Shea,

Information Management Specialist, Office of the Secretary.

[FR Doc. 2013–12287 Filed 5–20–13; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Express Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* May 22, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 15, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Express Mail Contract 15 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–50, CP2013–63.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–12104 Filed 5–21–13; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19d–1, SEC File No. 270–242, OMB Control No. 3235–0206.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 19d–1 (17 CFR 240.19d–1) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 19d–1 prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary actions with respect to any person; (2) denial, bar, prohibition, or limitation of membership, participation or association with a member or of access to services offered by an SRO or member thereof; (3) summarily suspending a member, participant, or person associated with a member, or summarily limiting or prohibiting any persons with respect to access to or services offered by the SRO or a member thereof; and (4) delisting a security.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to delist a security, discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that approximately eighteen respondents will utilize this application procedure annually, with a total burden of approximately 2,250 hours, based upon past submissions. This figure is based on eighteen respondents, spending approximately 125 hours each per year. It is estimated that each respondent will submit approximately 250 responses. Commission staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 for each submission is 0.5 hours. The average cost per hour, per each submission is approximately $101. Therefore, it is estimated that the internal labor cost of compliance for all respondents is approximately $227,250. (18 respondents × 250 responses per respondent × 0.5 hours per response × $101 per hour).

The filing of notices pursuant to Rule 19d–1 is mandatory for the SROs, but does not involve the collection of confidential information. Rule 19d–1 does not have a record retention requirement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria VA 22312 or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 16, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12149 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 15a–6, SEC File No. 270–0329, OMB Control No. 3235–0371.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15a–6 provides conditional exemptions from the requirement to register as a broker-dealer pursuant to Section 15 of the Exchange Act (15 U.S.C. 78o) for foreign broker-dealers that engage in certain specified activities involving U.S. persons. In particular, Rule 15a–6(a)(3) provides an exemption from broker-dealer registration for foreign broker-dealers that solicit and effect transactions with or for U.S. institutional investors or major U.S. institutional investors through a registered broker-dealer, provided that the U.S. broker-dealer, among other things, obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the registered broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities. Commission staff estimates that approximately 2,000 U.S. registered broker-dealers will spend an average of two hours of clerical staff time and one hour of managerial staff time per year obtaining the information required by the rule, resulting in a total aggregate burden of 6,000 hours per year for complying with the rule. Assuming an hourly cost of $63 [1] for a compliance clerk and $269 [2] for a compliance manager, the resultant total internal labor cost of compliance for the respondents is $790,000 per year (2,000 entities × ((2 hours/entity × $63/hour) + (1 hour per entity X $269/hour)) = $790,000).

In general, the records to be maintained under Rule 15a–6 must be kept for the applicable time periods as set forth in Rule 17a–4 (17 CFR 240.17a–4) under the Exchange Act or, with respect to the consents to service of process, for a period of not less than six years after the applicable person ceases engaging in U.S. securities activities. Reliance on the exemption set forth in Rule 15a–6 is voluntary, but if a foreign broker-dealer elects to rely on such exemption, the collection of information described therein is mandatory. The collection does not involve confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 16, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12148 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

[1] The hourly rate used for a compliance clerk was from SIFMA's *Office Salaries in the Securities Industry 2012,* modified by Commission staff to account for an 1,800 hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[2] The hourly rate used for a compliance manager was from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* modified by Commission staff to account for an 1,800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–245, OMB Control No. 3235–0204]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 19d–3.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 19d–3 (17 CFR 240.19d–3) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*).

Rule 19d–3 prescribes the form and content of applications to the Commission by persons seeking Commission review of final disciplinary actions against them taken by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Final disciplinary sanctions; (2) denial or conditioning of membership, participation or association; and (3) prohibitions or limitations of access to services offered by a SRO or member thereof.

It is estimated that approximately six respondents will utilize this application procedure annually, with a total burden of approximately 108 hours, for all respondents to complete all submissions. This figure is based upon past submissions. The Commission staff estimates that each respondent will submit approximately one response and the average number of hours necessary to comply with the requirements of Rule 19d–3 is approximately eighteen hours. The average cost per hour, to complete each submission, is approximately $101. Therefore, it is estimated the internal labor cost of compliance for all respondents is approximately $10,908 (6 submissions × 18 hours per response × $101 per hour).

The filing of an application pursuant to Rule 19d–3 is voluntary and does not involve the collection of confidential information. Rule 19d–3 does not have

a record retention requirement. The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to: *Shagufta_Ahmed@omb.eop.gov* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

March 16, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12150 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–14, OMB Control No. 3235–0336, SEC File No. 270–297.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Form N–14 (17 CFR 239.23) is the form for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') of securities issued by management investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and business development companies as defined by Section 2(a)(48) of the Investment Company Act in: (1) A transaction of the type specified in rule 145(a) under the Securities Act (17 CFR 230.145(a)); (2) a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; (3) an exchange offer for securities of the issuer or another person; (4) a public reoffering or resale of any securities acquired in an offering registered on Form N–14; or (5) two or more of the transactions listed in (1) through (4) registered on one registration statement. The principal purpose of Form N–14 is to make material information regarding securities to be issued in connection with business combination transactions available to investors. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. Without the registration statement requirement, material information may not necessarily be available to investors.

We estimate that approximately 139 funds each file one new registration statement on Form N–14 annually, and that 58 funds each file one amendment to a registration statement on Form N–14 annually. Based on conversations with fund representatives, we estimate that the reporting burden is approximately 620 hours per respondent for a new Form N–14 registration statement and 300 hours per respondent for amending the Form N–14 registration statement. This time is spent, for example, preparing and reviewing the registration statements. Accordingly, we calculate the total estimated annual internal burden of responding to Form N–14 to be approximately 103,580 hours. In addition to the burden hours, based on conversations with fund representatives, we estimate that the total cost burden of compliance with the information collection requirements of Form N–14 is approximately $27,500 for preparing and filing an initial registration statement on Form N–14 and approximately $16,000 for preparing and filing an amendment to a registration statement on Form N–14. This includes, for example, the cost of goods and services purchased to prepare and update registration statements on Form N–14, such as for the services of outside counsel. Accordingly, we calculate the total estimated annual cost burden of responding to Form N–14 to be approximately $4,750,500.

Estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under Form N–14 is mandatory. The information provided under Form N–14 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site: *www.reginfo,gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 16, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12147 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30521; File No. 812–14098]

Financial Investors Trust and Hanson McClain Strategic Advisors, Inc.; Notice of Application

May 15, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act.

Summary of the Application: The requested order would (a) permit certain registered open-end management investment companies that operate as ''funds of funds'' to acquire shares of certain registered open-end management

investment companies and unit investment trusts (''UITs'') that are within and outside the same group of investment companies as the acquiring investment companies, and (b) permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Financial Investors Trust (the ''Trust''), on behalf of the Pathway Advisors Conservative Fund, Pathway Advisors Growth & Income Fund, and Pathways Advisors Aggressive Growth Fund (collectively, the ''Hanson Funds''), and Hanson McClain Strategic Advisors, Inc. (the ''Adviser'').

DATES: *Filing Dates:* The application was filed on November 27, 2012 and amended on March 28, 2013. *Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 10, 2013 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Trust, 1290 Broadway, Suite 1100, Denver, Colorado 80203; Adviser, 3620 Fair Oaks Blvd., Suite 300, Sacramento, California 95684.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust currently is comprised of multiple series, including the Hanson Funds, each of which pursues its own investment strategies.[1]

2. The Adviser, a California corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Hanson Funds and may serve as investment adviser to future Funds.

3. Applicants request an order to permit (a) a Fund that operates as a ''fund of funds'' (each a ''Fund of Funds'') to acquire shares of (i) registered open-end management investment companies or series thereof that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (''Unaffiliated Investment Companies'') and UITs that are not part of the same group of investment companies as the Fund of Funds (''Unaffiliated Trusts,'' together with the Unaffiliated Investment Companies, ''Unaffiliated Funds''),[2] or (ii) registered open-end management companies or UITs that are part of the same group of investment companies as the Fund of Funds (collectively, ''Affiliated Funds,'' together with the Unaffiliated Funds, ''Underlying Funds'') and (b) each Underlying Fund, any principal underwriter for the Underlying Fund, and any broker or dealer (''Broker'') registered under the Securities Exchange Act of 1934 (''Exchange Act'') to sell shares of the Underlying Fund to the Fund of Funds.[3] Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

4. Applicants also request an exemption under section 6(c) from rule 12d1–2 under the Act to permit any existing or future Fund of Funds that relies on section 12(d)(1)(G) of the Act (''Same Group Fund of Funds'') and that otherwise complies with rule 12d1–2 to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').

Applicants' Legal Analysis

Investments in Underlying Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit a Funds of Funds to acquire shares of the Underlying Funds in excess of the limits in section 12(d)(1)(A), and an Underlying Fund, any principal underwriter for an Underlying Fund, and any Broker to sell shares of an Underlying Fund to a Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

3. Applicants state that the terms and conditions of the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is

[1] Applicants request that the relief apply to each existing and future series of the Trust and future registered open-end management investment company or series thereof that is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser and that is part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii)) as the Trust (collectively, including the Hanson Funds, ''Funds'').

[2] Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares to be listed and traded on a national securities exchange at negotiated prices (''ETFs'').

[3] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

consistent with the public interest and the protection of investors.

4. Applicants submit that the proposed arrangement will not result in the exercise of undue influence by a Fund of Funds or a Fund of Funds Affiliate (as defined below) over the Unaffiliated Funds.[4] To limit the control that a Fund of Funds may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Adviser, any person controlling, controlled by, or under common control with the Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Adviser or any person controlling, controlled by, or under common control with the Adviser (the ''Advisory Group'') from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any subadviser within the meaning of section 2(a)(20)(B) of the Act (''Subadviser'') to a Fund of Funds, any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (the ''Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting'').[5]

5. To further assure that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their boards of directors or trustees (for any entity, the ''Board'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.[6]

6. Applicants state that they do not believe that the proposed arrangement will involve excessive layering of fees. The Board of each Fund of Funds, including a majority of the directors or trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (for any Board, the ''Independent Trustees''), will find that the advisory fees charged under any investment advisory or management contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rule 2830'').[7]

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 11 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Fund of Funds and the Affiliated Funds might be deemed to be under common control of the Adviser and therefore affiliated persons of one another. Applicants also state that a Fund of Funds and the Unaffiliated Funds might be deemed to be affiliated persons of one another if the Fund of Funds acquires 5% or more of an Unaffiliated Fund's outstanding voting securities. In light of these and other possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or

[4] A ''Fund of Funds Affiliate'' is the Adviser, any Subadviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by, or under common control with any of those entities. An ''Unaffiliated Fund Affiliate'' is an investment adviser, sponsor, promoter, or principal underwriter of an Unaffiliated Fund, as well as any person controlling, controlled by, or under common control with any of those entities.

[5] An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, investment adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, Subadviser, or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the Act.

[6] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[7] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by FINRA.

appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act.[8] Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of the Underlying Fund.[9] Applicants state that the proposed transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act.

Other Investments by Same Group Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that a Same Group Fund of Funds may invest a portion of its assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Same Group Funds of Funds to invest in Other Investments. Applicants assert that permitting Same Group Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

4. Applicants represent that, consistent with its fiduciary obligations under the Act, the Board of each Same Group Fund of Funds will review the advisory fees charged by the Same Group Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Fund of Funds may invest.

Applicants' Conditions

Investments by Funds of Funds in Underlying Funds

Applicants agree that the relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of an Advisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadvisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, an Advisory Group or a Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of the Unaffiliated Fund, then the Advisory Group or the Subadvisory Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadvisory Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that its Adviser and any Subadviser(s) to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with

[8] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by a Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[9] To the extent purchases and sales of shares of an ETF occur in the secondary market (and not through principal transactions directly between a Fund of Funds and an ETF), relief from section 17(a) of the Act would not be necessary. The requested relief is intended to cover, however, transactions directly between ETFs and a Fund of Funds. Applicants are not seeking relief from section 17(a) of the Act for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because the investment adviser to the ETF or an entity controlling, controlled by or under common control with the investment adviser to the ETF is also an investment adviser to the Fund of Funds.

the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s) or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired, (b) identity of the underwriting syndicate's members, (c) terms of the purchase, and (d) information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under such advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding and the basis upon which the finding was made will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

12. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to fund of funds set forth in NASD Conduct Rule 2830.

Other Investments by Same Group Funds of Funds

Applicants agree that the relief to permit Same Group Funds of Funds to invest in Other Investments shall be subject to the following condition:

13. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Same Group Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12144 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30523; File No. 812–14085]

LocalShares Investment Trust, et al.; Notice of Application

May 15, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: LocalShares Investment Trust (the ''Trust''), LocalShares, Inc. (the ''Adviser''), and SEI Investments Distribution Co. (''SEI'').

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) Certain open-end management investment companies or series thereof to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on October 17, 2012, and amended on April 3, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. June 10, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549; the Trust and the Adviser, 618 Church Street, Suite 220, Nashville, TN 37219; SEI, One Freedom Valley Drive, Oaks PA 19456.

FOR FURTHER INFORMATION CONTACT: Barry Pershkow, Senior Special Counsel at (202) 551–6877, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and organized as a Delaware statutory trust. Applicants request that the order apply to the series of the Trust described in Appendix B to the application (''Initial Fund'') and any future series of the Trust and any other open-end management companies or series thereof created in the future (''Future Funds'') that tracks a specified securities index (an ''Underlying Index'').[1] Any Future Fund will be (a) advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and (b) comply with the terms and conditions of the application. Each Underlying Index will be comprised solely of equity and/or fixed income securities. The Funds will be based on Underlying Indexes comprised of equity and/or fixed income securities that trade in U.S. markets (''Domestic Funds'') or securities that trade in non-U.S. markets (''Foreign Funds'') or Underlying Indexes comprised of a combination of domestic and foreign securities (''Global Funds''). The Initial Fund and all Future Funds, together, are the ''Funds.''

2. The Adviser will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to a particular Fund (each, a ''Sub-Adviser''). Each Sub-Adviser will be registered, or not subject to registration under the Advisers Act. The Trust will enter into a distribution agreement with one or more distributors that will be registered as a broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (''Exchange Act'') and will serve as the principal underwriter and distributor (''Distributor'') for one or more Funds. The Distributor for the Initial Fund is SEI. A Distributor may be an affiliated person of, or an affiliated person of such affiliated person of, the Adviser and/or Sub-Advisers within the meaning of section 2(a)(3) of the Act.

3. Each Fund will consist of a portfolio of securities, other assets and/or positions (''Portfolio Positions'') selected to correspond to the performance of its Underlying Index. No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, (''Affiliated Person'') or an affiliated person of an affiliated person (''Second-Tier Affiliate'') of the Trust, any Fund, the Adviser, any Sub-Adviser, or promoter of a Fund, or of any Distributor.

4. The Initial Fund's investment objective will be to seek to replicate as closely as possible, before fees and expenses, the price and yield performance of an index comprised of publicly traded U.S. companies that have corporate headquarters in the Nashville, Tennessee region and that meet certain requirements regarding capitalization, trading volume, and price levels (the ''Nashville Index''). The investment objective of each Fund will be to provide investment returns that correspond, before fees and expenses, to

[1] All entities that currently intend to rely on the requested order are named as applicants. Any other existing or future entity that relies on the order will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in the Funds and not in any other registered investment company.

the performance of its Underlying Index.[2] Each Fund will sell and redeem Creation Units on a ''Business Day,'' which is defined as any day that the NYSE, the relevant Listing Exchange (as defined below), the Trust and the custodian of the Funds are open for business and includes any day that a Fund is required to be open under section 22(e) of the Act. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities in its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all, of the Component Securities of its Underlying Index. Applicants state that in using the representative sampling strategy, a Fund is not expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invests in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. Creation Units will consist of specified large aggregations of Shares, *e.g.,* 25,000 or 100,000 Shares, and it is expected that the initial price of a Creation Unit will range from $1 million to $2.5 million. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either: (a) A Broker or other participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant'').

6. The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[3] On any given Business Day the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in a Fund's portfolio (including cash positions),[4] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [5] (c) ''to be announced'' transactions (''TBA Transactions''),[6] derivatives and other positions that cannot be transferred in kind [7] will be excluded from the Deposit Instruments and the Redemption Instruments; [8] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [9] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [10] (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Foreign Funds and Global Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such

[2] Applicants represent that at least 80% of each Fund's total assets (excluding securities lending collateral) (''80% Basket'') will be invested in component securities that comprise its Underlying Index (''Component Securities'') or TBA Transactions (as defined below), or in the case of Foreign Funds and Global Funds, the 80% Basket requirement may also include Depositary Receipts (defined below) representing Component Securities. Each Fund may also invest up to 20% of its total assets in a broad variety of other instruments, including securities not included in its Underlying Index, which the Adviser and/or Sub-Adviser believes will help the Fund in tracking the performance of its Underlying Index.

[3] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[4] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[5] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[6] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[7] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[8] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (defined below).

[9] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[10] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. Purchases of Creation Units either on an all cash basis or in kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in kind redemption. As a result, tax considerations may warrant in kind redemptions.

instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund or Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[11]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange'') on which Shares are listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Balancing Amount (if any), for that day. The list of Deposit Instruments and the list of Redemption Instruments will apply until new lists are announced on the following Business Day, and there will be no intra-day changes to the lists except to correct errors in the published lists. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Balancing Amount and (ii) the current value of the Deposit Instruments.

9. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[12] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant, and it will be the Distributor's responsibility to transmit such orders to the Funds. The Distributor also will be responsible for delivering the Fund's prospectus to those persons purchasing Shares in Creation Units and for maintaining records of both the orders placed with it and the acknowledgements of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

10. Shares of the Initial Funds will be listed on the NYSE Arca, Inc. Exchange (''NYSE Arca''). Shares of each Future Fund will be listed and traded individually on an Exchange. It is expected that one or more Exchange liquidity providers or market makers (''Market Makers'') will be assigned to Shares and maintain a market for Shares trading on the Listing Exchange. The price of Shares trading on an Exchange will be based on a current bid-offer market. Transactions involving the sale of Shares on an Exchange may be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase or redeem Creation Units in connection with their market making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[13] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help to ensure that Shares will not trade at a material discount or premium in relation to their NAV per Share.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

13. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or ''mutual fund.'' Instead, each Fund will be marketed as an ''exchange-traded fund'' or an ''ETF.'' All advertising materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units according to the provisions of the Act.

[11] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[12] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[13] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV per Share.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the Shares do not trade at a material discount or premium in relation to their NAV.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds and Global Funds will be contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles in local markets for the foreign Portfolio Positions held by the Foreign Funds and Global Funds. Applicants state that current delivery cycles for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, in certain circumstances will require a delivery process for the Foreign Funds and Global Funds of up to 14 calendar days. Applicants request relief under section 6(c) of the Act from section 22(e) to allow Foreign Funds and Global Funds to pay redemption proceeds up to 14 calendar days after the tender of the Creation Units for redemption. Except as disclosed in the relevant Foreign Fund's or Global Fund's SAI, applicants expect that each Foreign Fund and Global Fund will be able to deliver redemption proceeds within seven days.[14]

8. Applicants state that Congress adopted section 22(e) to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Foreign Fund or Global Fund to be made within the number of days indicated above would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of in kind redemption proceeds in seven calendar days, and the maximum number of days (up to fourteen calendar days) needed to deliver the proceeds for each affected Foreign Fund and Global Fund.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds or Global Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1) of the Act

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling the investment company's shares to another investment company if the sale would cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale would cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not sponsored or advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Investing Funds'') to acquire Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit a Fund, any Distributor, and/or any Broker to sell Shares to Investing Funds in excess of the limits of section 12(d)(1)(B).

12. Each Investing Management Company's investment adviser within the meaning of section 2(a)(20)(A) of the Act is the ''Investing Fund Adviser'' and each Investing Management Company's investment adviser within the meaning of section 2(a)(20)(B) of the Act is the ''Investing Fund Sub-Adviser.'' Any investment adviser to an Investing Fund will be registered under the Advisers Act. Each Investing Trust's sponsor is the ''Sponsor.''

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is

[14] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade date. Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations that they have under rule 15c6–1.

consistent with the public interest and the protection of investors.

14. Applicants believe that neither an Investing Fund nor an Investing Fund Affiliate would be able to exert undue influence over a Fund.[15] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the Investing Fund Adviser, Sponsor, any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Funds' Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Sub-Adviser, any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Adviser or any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser (''Investing Funds' Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

15. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not interested directors or trustees within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5, an Investing Fund Adviser, or Investing Trust's trustee (''Trustee'') or Sponsor, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Adviser, Trustee or Sponsor or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, in connection with the investment by the Investing Fund in the Fund. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.[16]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares for short-term cash management purposes. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''Investing Fund Participation Agreement''). The Investing Fund Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

17. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by an Investing Fund. To the extent that an Investing Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the Investing Fund Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1)(A).

Section 17 of the Act

18. Section 17(a) of the Act generally prohibits an Affiliated Person or a Second-Tier Affiliate, from selling any security to or purchasing any security from a registered investment company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence Affiliated Persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund''). Applicants also state that any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

19. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act in order to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are Affiliated

[15] An ''Investing Fund Affiliate'' is any Investing Fund Adviser, Investing Fund Sub-Adviser, Sponsor, promoter or principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of those entities. ''Fund Affiliate'' is the Adviser, Sub-Adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[16] All references to Conduct Rule 2830 of the NASD include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

Persons or Second-Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, any Investing Fund of which the Fund is an Affiliated Person or Second-Tier Affiliate.[17]

20. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Deposit Instruments and Redemption Instruments for each Fund will be valued in the same manner as the Portfolio Securities currently held by such Fund, and will be valued in this same manner, regardless of the identity of the purchaser or redeemer. Portfolio Positions, Deposit Instruments, Redemption Instruments, and applicable Balancing Amounts (except where a fund permits an in-kind purchaser or redeemer to substitute cash as specified above) will be the same regardless of the identity of the purchaser or redeemer. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons of a Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching of the Fund. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[18] Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

3. The Web site maintained for each Fund, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of an Investing Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Investing Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Funds' Advisory Group or the Investing Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Funds' Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Adviser or a person controlling, controlled by, or under common control with the Investing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Adviser and any Investing Fund Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in securities of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Trust (''Board''), including a majority of the disinterested trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. The Investing Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the

[17] To the extent that purchases and sales of Shares of a Fund occur in the secondary market (and not through principal transactions directly between an Investing Fund and a Fund), relief from section 17(a) would not be necessary. The requested relief is intended to cover, however, transactions directly between Funds and Investing Funds. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person or Second-Tier Affiliate of an Investing Fund because an investment adviser to the Fund or an entity controlling, controlled by or under common control with the investment adviser is also an investment adviser to the Investing Fund.

[18] Applicants acknowledge that the receipt of compensation by (a) an Affiliated Person of an Investing Fund, or a Second-Tier Affiliate, for the purchase by the Investing Funds of Shares of a Fund or (b) an Affiliated Person of a Fund, or a Second-Tier Affiliate, for the sale by the Fund of Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The Investing Fund Participation Agreement also will include this acknowledgment.

Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Adviser will waive fees otherwise payable to the Investing Fund Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Adviser, or an affiliated person of the Investing Fund Sub-Adviser, other than any advisory fees paid to the Investing Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Adviser. In the event that the Investing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board, including a majority of the disinterested trustees, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), each Investing Fund and the Fund will execute an Investing Fund Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the Investing Fund Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to an Investing Fund as set forth in Conduct Rule 2830 of the NASD.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12146 Filed 5–21–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69599; File No. SR–BOX–2013–28]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Create a New Fee Structure for Complex Orders on the BOX Market LLC Options Facility

May 16, 2013.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] 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 is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to create a new fee structure for Complex Orders on the BOX Market LLC (''BOX'') options facility. Changes to the fee schedule pursuant to this proposal will be effective upon filing. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.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 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, Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to create a new fee structure for Complex Orders. The Exchange recently amended its rules related to trading Complex Orders [5] on BOX. In particular, the Exchange amended the BOX Rules to facilitate interaction on a continuous and real-time basis among orders on BOX, consisting of Complex Orders on the Complex Order Book [6] and interest on the BOX Book.[7] The Exchange is submitting this filing to describe the fees that are applicable to Complex Order transactions.

First, the Exchange proposes to establish a new section (Section III. Complex Order Transaction Fees) in the BOX Fee Schedule to detail the fee and credit structure for Complex Order executions (the ''Complex Order Fees''). The remaining sections of the Fee Schedule (Eligible Orders Routed to an Away Exchange, Technology Fees, and Regulatory Fees) will be renumbered accordingly.

The Exchange then proposes to specify that the Complex Order Fees will be applied per contract per leg to all executions of Complex Orders. Executions of Complex Orders will not be subject to Sections I (Exchange Fees) and II (Liquidity Fees and Credits), and Complex Orders for Mini Options orders will be assessed 1/10th of the otherwise applicable Complex Order Fees.

The Exchange also proposes to count all Complex Order transactions by Market Makers toward their monthly average daily volume ''ADV'' as outlined in Section I.B. (Exchange Fees). BOX currently gives volume incentives for standard transaction fees to Market Makers that, on a daily basis, trade an average daily volume, as calculated at the end of the month, of more than 5,000 contracts on BOX. The Exchange notes that the Options Regulatory Fee outlined in Section V (Regulatory Fees) will apply to Complex Order Fees.[8]

The Exchange then proposes that Complex Order Fees will be determined according to whether the Complex Order executes against orders on the BOX Book or against another Complex Order and according to the account types of the Participant submitting the Complex Order and the contra party.

Complex Orders Executed Against Orders on the BOX Book

In proposed Section III.A, Complex Orders Executed Against Orders on the BOX Book, the Exchange proposes to adopt a fee or credit based on the Participant's Account Type.[9] This fee structure will apply when a Complex Order executes against an order on the BOX Book. In these transactions the Exchange proposes to credit $0.35 per contract per leg for Complex Orders executed by Public Customers, assess a fee of $0.45 per contract per leg for Complex Orders executed by Professional Customers and Broker Dealers, and assess a fee of $0.40 per contract per leg for Complex Orders executed by Market Makers.

For example, if a Professional Customer's Complex Order A+B executes against orders on the BOX Book, the Professional Customer will be charged $0.90 ($0.45 for A, plus $0.45 for B). A Public Customer executing Complex Order A+B will receive a credit of $0.70 ($0.35 for A, plus $0.35 for B).

Complex Orders Executed Against Other Complex Orders

In proposed Section III.B, Complex Orders Executed Against Other Complex Orders, the Exchange proposes to adopt a fee or credit based on the Participant's account type and the contra party's account type. In these transactions, Complex Orders in penny pilot classes will be assessed a lower fee than those in non-penny pilot classes. This fee structure will apply when a Complex Order executes against another Complex Order on the Complex Order Book.

Specifically, the Exchange proposes to assess a distinct fee or credit, on a per contract per leg basis, for Complex Orders executed against another Complex Order on the Complex Order Book by each of Public Customers, Professional Customers, Broker Dealers and Market Makers depending upon the contra order account type in the transaction.

The Exchange proposes the fees and credits set forth in the table below (and included in proposed Section III.B) when Complex Orders execute against other Complex Orders on the Complex Order Book:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] ''Complex Order'' is defined as ''any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.'' *See* Securities Release No. 69419 (April 19, 2013), 78 FR 24449 (April 25, 2013) (SR–BOX–2013–01).

[6] ''Complex Order Book'' is defined as ''the electronic book of Complex Orders maintained by the BOX Trading Host.'' *See* proposed Rule 7240(a)(6).

[7] ''BOX Book'' (also the ''Central Order Book'') is defined as ''the electronic book of orders on each single series of options maintained by the BOX Trading Host.'' *See* proposed Rule 100(a)(10).

Account type	Contra party	Penny pilot classes	Non-Penny pilot classes
Public Customer	*Public Customer*	*$0.00*	*$0.00*
	Professional Customer/Broker Dealer/Market Maker	*(0.35)*	*(0.70)*
Professional Customer	*Public Customer*	*0.45*	*0.80*
	Professional Customer/Broker Dealer/Market Maker	*0.20*	*0.40*
Broker Dealer	*Public Customer*	*0.45*	*0.80*
	Professional Customer/Broker Dealer/Market Maker	*0.20*	*0.40*
Market Maker	*Public Customer*	*0.40*	*0.75*
	Professional Customer/Broker Dealer/Market Maker	*0.10*	*0.20*

For example, if a Professional Customer's Complex Order A+B in a penny pilot class executes against a Public Customer's Complex Order on the Complex Order Book, the Professional Customer will be charged $0.90 ($0.45 for A, plus $0.45 for B) and the Public Customer will receive a $0.70 credit ($0.35 for A, plus $0.35 for B). To expand upon this example, if the Professional Customer's same Complex Order is executed against a Market Maker's Complex Order on the Complex Order Book, the Professional Customer will be charged $0.40 ($0.20 for A, plus $0.20 for B) and the Market Maker will be charged $0.20 ($0.10 for A, plus $0.10 for B).

Orders on BOX Book Executed Against Complex Orders

In proposed Section III.C, Orders on BOX Book Executed Against Complex Orders, the Exchange proposes to clarify that orders on the BOX Book that execute against Complex Orders will be treated as standard orders for purposes of the Fee Schedule and continue to be subject to Sections I (Exchange Fees) and II (Liquidity Fees and Credits).

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Complex Order Fees are reasonable, equitable and non-discriminatory. In particular, the proposed Complex Order Fees will allow the Exchange to be competitive with other exchanges and to apply fees and credits in a manner that is equitable among all BOX Participants. The Exchange operates within a highly competitive market in which market participants can readily direct order flow to any other competing exchange if they determine fees at a particular exchange to be excessive. The proposed Complex Order Fees are intended to attract Complex Orders to the Exchange by offering market participants incentives to submit their Complex Orders to the Exchange. The Exchange believes it is appropriate to provide incentives for market participants to submit Complex Orders, resulting in greater liquidity and ultimately benefiting all Participants trading on the Exchange.

The Exchange believes that exempting Complex Orders from Section I (Exchange Fees) and Section II (Liquidity Fees and Credits) is reasonable, equitable and not unfairly discriminatory. The proposed Complex Order Fees are meant to take the place of Exchange Fees for Complex Order transactions. The Exchange's Liquidity Fees and Credits are intended to attract order flow to the Exchange by offering incentives to all market participants to submit orders to the Exchange and the Exchange believes that the proposed Complex Order fee structure will provided appropriate incentives to encourage Participants to submit Complex Orders. The Exchange believes that exempting Complex Orders from liquidity fees and credits is reasonable compared to the similar fees and credits offered by the other exchanges. The Exchange believes exempting Complex Orders from liquidity fees and credits is not unfairly discriminatory as the exemption of Complex Order transactions from exchange fees and liquidity fees and credits applies equally to all Participants on the Exchange.

The Exchange proposes Complex Order Fees in Mini Options at a rate that is 1/10th the rate of the otherwise applicable Complex Order Fees outlined above. The Exchange believes the proposed Complex Order Fees applicable to Mini Options are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, 1/10th that of a standard option contract. Therefore, assessing 1/10th of the otherwise applicable Complex Order Fees is appropriate for Complex Orders involving Mini Options. Furthermore, Mini Options have been approved for trading at several other competing exchanges and market participants can readily direct their Complex Order flow to any these exchanges if they determine the Exchange's Complex Order Mini Option fees to be excessive.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to include Complex Order transaction volume in each Market Maker's ADV calculation because doing so will provide the Market Maker with an opportunity to qualify for discounted fees and, therefore, further incentivize these essential Participants to trade more order flow on the Exchange, which the Exchange believes will ultimately benefit all Participants trading on BOX.

Increased Market Maker order flow will also benefit all market participants by deepening the BOX liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange believes that including Complex Order transaction volume in the ADV calculation will provide additional incentive for Market Makers to increase Complex Order volume on BOX. Increased Complex Order volume increases potential revenue to BOX, allowing the Exchange to spread its administrative and infrastructure costs over a greater number of transactions, which could lead to lower costs per transaction. The Exchange believes that the volume based discounts for Market Makers are equitable because they are open to all Market Makers on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

With regard to the proposed Complex Order Fees that will be determined

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

according to whether the Complex Order executes against orders on the BOX Book or against another Complex Order and according to the account types of the Participant submitting the Complex Order and the contra party, the Exchange believes this fee structure is reasonable, equitable and non-discriminatory. The Complex Order Fees are competitive with the Complex Order fee structures in place on other exchanges. Specifically the Exchange is proposing to adopt Complex Order Fees similar to the model used by the NYSE Arca, Inc. (''NYSE Arca'') that varies the Complex Order fees and credits depending on where the Complex Order executes, and the contra party account type that the Complex Order interacts with.[12] This model was adopted by NYSE Arca in 2012 [13] and has been accepted by both the Commission and the industry. For example, a Public Customer executing a Complex Order on NYSE Arca will be charged $0.45 per contract per leg for penny pilot issues or $0.82 per contract per leg for non-penny pilot issues if that order executes on the regular order book. However, if the same Complex Order executes against a Complex Order on the exchange's Complex Order Book from a non-Public Customer (Professional Customer, Broker Dealer or Market Maker), the Customer will receive a $0.39 credit per contract per leg for penny pilot issues and a $0.75 credit per contract per leg for non-penny pilot issues. The result of this structure is that a NYSE Arca member does not know the fee it will be charged when submitting a Complex Order. Therefore, the member must recognize that it could be charged the highest applicable fee on the exchange's schedule, which may, instead, be lowered or changed to a credit depending how its Complex Order interacts.

The Exchange believes that the proposed Complex Order Fee model is reasonable because a Public Customer submitting Complex Orders on BOX will recognize that it will not pay a fee for these transactions. Depending on where and with whom the Complex Order executes, the Public Customer may receive an additional benefit for submitting the order. Likewise, a Professional Customer or Broker Dealer submitting Complex Orders will recognize that it will not be charged more than $0.45 in penny pilot issues and $0.80 in non-penny pilot issues. The same is true for Market Makers, who will recognize that their maximum charge when submitting a Complex Order will be $0.40 in penny pilot issues and $0.75 in non-penny pilot issues.

The Exchange believes it is reasonable and equitable to assess Complex Order Fees based upon issue type, where the Complex Order executes, the account type of the Participant submitting the Complex Order and the contra party account type. The Exchange's Complex Order Fees must be competitive with other exchanges to attract order flow, execute orders and grow its market. The Exchange believes the proposed Complex Order Fees are competitive with both Arca and ISE.[14] The Exchange notes that submitting Complex Orders to BOX is entirely voluntary and that several other competing exchanges possess similar Complex Order functionalities, including Arca. Participants can therefore choose what type of order to submit to BOX, or direct their Complex Order flow to any other exchange if they determine the proposed Complex Order fee structure to be unreasonable.

The Exchange believes it is reasonable and equitable to provide credits for Public Customer Complex Orders and to charge fees to Professional Customers, Broker Dealers and Market Makers when their Complex Orders execute on the BOX Book. The Exchange believes that the proposed $0.35 credit for Public Customers, $0.45 fee for Professional Customers and Broker Dealers, and $0.40 fee for Market Makers strikes an appropriate balance between the fees charged for standard orders and the proposed Complex Order Fees. The Complex Order Fees will continue to encourage Participants to execute Complex Orders by ensuring that they receive similar incentives regardless of where their Complex Order executes. The Exchange believes this will help attract Complex Order flow to the Exchange and create increased liquidity, which will ultimately benefit all Participants trading on BOX. The proposed fees and credits are also competitive with the fees and credits offered for similar transactions on at least one other exchange.[15]

The Exchange believes providing a credit to Public Customers for Complex Orders that execute against orders on the BOX Book is equitable and non-discriminatory. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. Accordingly, the Exchange believes that providing a credit for Public Customer Complex Order transactions is appropriate and not unfairly discriminatory. Public Customers are less sophisticated than other Participants and the credit will help to attract a high level of Public Customer order flow to the Complex Order Book and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX.

The Exchange also believes it is equitable and not unfairly discriminatory for BOX Market Makers to be assessed lower fees than Professional Customers and Broker Dealers for Complex Orders that execute against orders on the BOX Book because of the significant contributions to overall market quality that Market Makers provide. Specifically, Market Makers can provide higher volumes of liquidity and lowering their Complex Order fees will help attract a higher level of Market Maker order flow to the Complex Order Book and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX. As such, the Exchange believes it is appropriate that Market Makers be charged lower Complex Order transaction fees. Market Makers also have additional obligations that are not applicable to Professional Customers and Broker Dealers.

As stated above, the Exchange believes that the Complex Order Fees proposed for Complex Orders that execute against other Complex Orders are reasonable and equitable. The proposed credits and fees are competitive with the credits offered for similar transactions on at least one other exchange.[16]

The Exchange also believes it is reasonable to charge Professional Customers, Broker Dealers, and Market Makers less for executions in penny pilot issues because these classes are typically the more actively traded and assessing lower fees will further incentivize Complex Order transaction in penny pilot issues on the Exchange, ultimately benefiting all Participants trading on BOX. The Complex Order Fees are competitive with the fees and credits offered for similar transactions

[12] *See* NYSE Arca Options Schedule of Fees as of May 1, 2013, available at *http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_arca_options_fee_schedule__050113.pdf.*

[13] *See* Securities Release No. 68405 (December 11, 2012), 77 FR 74719 (December 17, 2012) (SR–NYSEArca–2012–137).

[14] *See* International Securities Exchange Schedule of Fees as of April 1, 2013, available at *http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf.*

[15] For Complex Orders that interact with the regular order book, Arca charges Public Customers $0.45 or $0.82 (depending on issue), and charges Broker Dealers $0.48 or $0.87 (depending on issue).

[16] *See supra,* notes 12 and 14.

on at least one other exchange.[17] Additionally, the Exchange believes it is reasonable to give a greater credit to Public Customers in Complex Order transactions involving non-penny pilot issues. These classes have wider spreads and are less actively traded; and giving a larger credit will further incentivize Public Customers to trade in these classes. The proposed Public Customer credits are competitive with the credits offered for similar transactions on at least one other exchange.[18]

The Exchange believes that it is equitable and not unfairly discriminatory to exempt Public Customers from Complex Order fees when executing against another Public Customer's Complex Order and provide a credit when the same order executes against other Participant's Complex Orders. As stated above, BOX has historically tried to develop features within the market structure for the benefit of the customer. As such, the Exchange believes that exempting and crediting Public Customer Complex Order transactions is appropriate and not unfairly discriminatory. Public Customers are less sophisticated than other Participants and the Exchange believes exempting and crediting Public Customer Complex Order transactions will help to attract a high level of Public Customer order flow to the Complex Order Book and create liquidity, which will ultimately benefit all Participants trading on BOX. In addition, the proposed fees and credits are competitive with the Complex Order fees and credits on at least one other exchange.[19]

Further, the Exchange believes that the proposed Complex Order Fees for Professional Customers, Broker Dealers, and Market Makers interacting with other Complex Orders are equitable, reasonable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (more than 390 standard orders per day on average). The Exchange believes the relative activity of Professional Customers will be similar for Complex Orders, and the higher level of trading activity will draw a greater amount of BOX system resources than that of non-professional, Public Customers. Because this higher level of trading activity will result in greater ongoing operational costs, the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers a market competitive fee for Complex Order transactions.

Finally, the Exchange believes it is reasonable, equitable and non-discriminatory to give Public Customers a higher credit when their Complex Orders execute against a non-Public Customer on the Complex Order Book and, accordingly, charge non-Public Customers a higher fee when their Complex Order executes against a Public Customer on the Complex Order Book. The Exchange, and the securities market generally, aims to improve markets by developing features for the benefit of its customers. Similar to the payment for order flow and other pricing models that have been adopted by the Exchange and other exchanges to attract Public Customer order flow, the Exchange increases fees to non-Public Customers in order to provide incentives for Public Customers. The Exchange believes that providing incentives for Complex Order transactions by Public Customers is reasonable and, ultimately, will benefit all Participants trading on the Exchange by attracting Public Customer order flow. Accordingly, the Exchange believes that this fee differential is appropriate and not unfairly discriminatory.

The Exchange also believes it is equitable and not unfairly discriminatory for BOX Market Makers to be assessed lower Complex Order Fees than Professional Customers and Broker Dealers. As discussed above, Market Makers provide significant contributions to market quality and have additional obligations that Professional Customers and Broker Dealers do not.

The Exchange believes that the proposed Complex Order Fees will keep the Exchange competitive with other exchanges and will be applied in an equitable manner among all BOX Participants. The Exchange believes the proposed Complex Order Fees are fair and reasonable and competitive with fees in place on other exchanges. Further, the Exchange believes that the competitive marketplace impacts the fees proposed for BOX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Complex Order Fees will neither impose burdens on competition among various Exchange Participants nor impose any burden on competition among exchanges in the listed options marketplace, not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to create an appropriate fee structure for Complex Orders on the Exchange.

The Exchange believes that adopting Complex Order Fees will not impose a burden on competition among various Exchange Participants. BOX currently assesses distinct standard contract Exchange fees for different account and transaction types. The Exchange believes that applying a fee structure that is determined by whether the Complex Order executes against orders on the BOX Book or against other Complex Orders, and according to the account types of the Participant submitting the Complex Order and the contra party, will result in Participants being charged appropriately for these transactions. Submitting a Complex Order is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to the Exchange.

Further, the Exchange believes that this proposal will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for Complex Order flow. In this regard, Complex Orders are a new order type being introduced by the Exchange and BOX is unable to absolutely determine the impact that the Complex Order Fees proposed herein will have on trading. That said, however, the Exchange believes that the proposed Complex Order Fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

[17] The ISE assesses Professional Customers and Broker Dealers $0.40 for Complex Order transactions in Penny Names and $.84 for Complex Order transactions in non-Penny Names.

[18] At the lowest volume tier level, the ISE gives Public Customers a $0.33 credit for Complex Order transactions in Penny Names, and a $0.66 credit for Complex Order transactions in non-Penny Names.

[19] The ISE exempts Public Customers Complex Orders from fees when trading against another Public Customer, and gives Public Customers a $0.33 to $0.66 credit when trading against non-Public Customers, depending on volume tier.

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 Exchange Act [20] and Rule 19b–4(f)(2) thereunder,[21] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–28 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–BOX–2013–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–28 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12169 Filed 5–21–13; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69596; File No. SR–NSCC–2013–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees Related to Portfolio Composition File Reporting in Addendum A of Its Rules and Procedures

May 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) [3] of the Act and Rule 19b–4(f)(2) [4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is to modify the fee schedule related to NSCC's Portfolio Composition File Reporting in Addendum A of NSCC's Rules and Procedures (''Rules''), as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is for NSCC to revise its fee schedule (as listed in Addendum A of its Rules [6]) as it relates to charges for reports on Index Receipt Portfolio Composition Files. Portfolio Composition File reports, as currently offered, contain information on all Index Receipt Portfolios eligible for processing by NSCC (''Legacy Files''). NSCC releases two Legacy Files each business day—one file for domestic portfolios and one for foreign portfolios. The files are offered both as machine readable output (''MRO'') and print image files. The fee associated with a Member's subscription to the Legacy Files is $125 per file per month.

Pursuant to this proposed rule change, NSCC implemented new fees for the offering of an enhanced reporting interface that allows Members to receive a Portfolio Composition File that contains only the Index Receipt

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission has modified the text of the summaries prepared by NSCC.

[6] NSCC Rules, Addendum A, *http://dtcc.com/legal/rules_proc/nscc_rules.pdf.*

Portfolios to which a Member subscribes (''Enhanced Files''). Fees for the Enhanced Files are charged in relation to the number of portfolios received by the Member on an average, daily basis per month. The Enhanced Files are available as MRO files and as a web-based interface from which Participants may download and print reports.[7]

NSCC continues to make available to Members subscriptions to Legacy Files at the current fee rates.

Revision to Fee Schedule

Pursuant to the fee schedule in Addendum A of NSCC's Rules, Members are currently charged $125 per Legacy File.[8] While the availability of and fees for Legacy Files are remaining unchanged, NSCC is now charging the following fees to Members who subscribe to the Enhanced Files:

SUBSCRIPTION-BASED PORTFOLIO COMPOSITION FILE REPORTING

Fees	Units [9]
$5	the first zero to 200 average daily units per month.
$3	the next 300 average daily units per month (201–500).
$2	for all average daily units above 500 per month.

The proposed rule change relates only to the enhanced reporting of Portfolio Composition Files and does not otherwise impact Index Receipt processing functionality.

Implementation Timeframe

The fee changes described above took effect on May 9, 2013.

Proposed Rule Changes

NSCC is amending Addendum A of its Rules to include the fee schedule for ''Subscription-based Portfolio Composition File Reporting,'' as shown above. No other changes to the Rules are contemplated by this proposed rule change.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act, as amended, specifically Section 17A(b)(3)(D),[10] and the rules and regulations thereunder applicable to NSCC because the change is aligning fees with the costs of delivering the additional reports described above, thus providing for the equitable allocation of reasonable fees among NSCC's Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NSCC–2013–06 on the subject line.

Paper Comments

- Send 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–NSCC–2013–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://dtcc.com/legal/rule_filings/nscc/2013.php.*

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–NSCC–2013–06 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12166 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

[7] The Enhanced Files also allow Members to view additional information with respect to a portfolio, including breakdowns of asset class and ''cash-in lieu'' components that are not otherwise NSCC-eligible.

[8] *See* NSCC Rules, Addendum A, *supra* note 6.

[9] ''Units'' refers to the number of portfolio subscriptions for each billing month. Unit charges are calculated by applying a tiered fee structure to the average daily number of units subscribed to by the Member in the billing month.

[10] 15 U.S.C. 78q–1(b)(3)(D).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69595; File No. SR–OCC–2013–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accommodate the Use of Vault Receipts or Warehouse Depository Receipts in Electronic Form, Rather Than Vault Receipts or Warehouse Depository Receipts in Physical Form, To Represent the Metals Underlying Physically-Settled Futures Contracts on Metals Traded by NYSE Liffe US LLC

May 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2013, The Options Clearing Corporation (''OCC'') 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 clearing agency. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b(4)(f)(1) thereunder[4] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to accommodate the use of vault receipts or warehouse depository receipts in electronic form (''electronic receipts''), rather than vault receipts or warehouse depository receipts in physical form, to represent the metals underlying physically-settled futures contracts on metals (''Precious Metals Futures'') traded by NYSE Liffe US LLC (''NYSE Liffe US'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of this proposed rule change is to revise OCC's Rules (the ''Rules'') to accommodate NYSE Liffe US's transition to using electronic receipts, rather than vault receipts or warehouse depository receipts in physical form, to represent the metals underlying Precious Metals Futures. To make this accommodation, OCC proposes to revise its Rules regarding the delivery of the metals underlying such futures contracts to provide that the vault receipts used to facilitate settlement can be held in either electronic or physical form during a transition period and, after such transition period expires, must be in electronic form. In addition, the proposed Rules clarify that the warehouse depository receipts created by NYSE Liffe US represent a proportional interest in a specified pool of the vault receipts held by NYSE Liffe US for contracts such as 100 oz. gold futures and 5,000 oz. silver futures. Such warehouse depository receipts shall be used in the settlement of mini-sized gold and silver futures and shall, in all cases, be in electronic form. The proposed Rules also clarify that vault receipts that are subject to third party liens or encumbrances are not eligible to be delivered to settle obligations pertaining to Precious Metals Futures.

In the event of a default or insolvency by either the delivering or receiving Clearing Member with respect to a Precious Metals Futures contract, OCC is required to pay damages to the non-defaulting Clearing Member. The amount of damages is determined by OCC, taking into account the delivery payment amount for the applicable Precious Metals Futures contract, the market price of the underlying interest, market conditions generally and reasonable and customary transaction costs applicable to transactions in the underlying interest. As a means of allowing OCC to complete delivery of the underlying precious metals owed by, or recover the amount of damages from, the defaulting Clearing Member, the proposed Rules authorize OCC to maintain a perfected security interest, or lien, in the vault receipts tendered for delivery during the delivery process. This lien will be automatically released at 10:00 a.m. Central Time on the related delivery date unless by such time OCC provides NYSE Liffe US with a notification that there was a default by the delivering Clearing Member, thereby keeping the lien in place. OCC intends to perfect its security interest in three ways: (a) By control; (b) by possession through a bailee; and (c) by filing financing statements.

Perfection by Control

Revised Article 7 of the Uniform Commercial Code (''UCC'') permits a secured party with a security interest in an electronic document of title to perfect that security interest by ''control.'' Revised Article 7 of the UCC is in effect in Illinois, but not in New York. OCC believes that certain procedures undertaken by NYSE Liffe US through its electronic delivery system, as detailed in the Amended and Restated Clearing Agreement (which is governed by the law of the state of Illinois), (a) conform to the requirements of Revised Article 7 of the UCC, as in effect in Illinois, and (b) are designed to effect the perfection of OCC's security interest in the electronic receipts through ''control.'' OCC effects perfection of its security interest in the electronic receipts by ''control'' in accordance with Revised Article 7 of the UCC, because NYSE Liffe US's electronic delivery system reliably establishes OCC as the transferee of such electronic receipts during the delivery process.

Perfection Through Bailee

In the event a court applies the laws of a jurisdiction that has not adopted Revised Article 7 of the UCC, OCC believes that its security interest in the electronic receipts would still be perfected under Article 9 of the UCC because of the bailment arrangements in place with the vaults holding the underlying precious metals. Each vault will sign a vault agreement agreeing that the vault holds the metals on behalf of OCC during the delivery process. OCC is an express third-party beneficiary of these vault agreements.

Perfection by Filing Financing Statements

In addition, both OCC's Rules and the Amended and Restated Clearing Agreement provide for a secondary method of perfecting OCC's security interest in both the electronic receipts and the underlying precious metals through the filing of financing statements against each Clearing Member in accordance with Article 9 of the UCC. Filing financing statements is an effective way to perfect the security interest in jurisdictions with, and without, Revised Article 7 of the UCC in effect.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

OCC believes that its primary and secondary perfection methods provide it with ample protection in the event of one of its clearing members fails to deliver a vault receipt that represent metals underling Precious Metals Futures. OCC perfected its security interest in such vault receipts through methods of perfection that work in jurisdictions that have adopted Revised Article 7 of the UCC, like Illinois, and in jurisdictions that have not, like New York. OCC has also adopted traditional perfection methods such as filing financing statements. Moreover, OCC requires each Clearing Member to deposit margin, which provides protection for OCC in the event of a Clearing Member's failure to satisfy its delivery or receipt obligations in respect of the settlement of Precious Metals Futures.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A(b)(3)(A) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act'' or ''Act''), because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the Commodity Futures Trading Commission (the ''CFTC'') without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. They accomplish this purpose by revising existing procedures regarding the delivery of metals underlying certain physically-settled futures and futures option contracts to make express provision for the use of warehouse depository receipts in electronic form and for a transition to the use of vault receipts that are also in electronic form as a more efficient method of delivery consistent with evolving industry practice. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Act because it relates solely to a commodity futures product subject to the exclusive jurisdiction of the Commodity Futures Trading Commission and therefore will not have any impact, or impose any burden, on competition in securities markets or any other market governed by the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been 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)(i) of the Act[5] and paragraph (f)(i) of Rule 19b–4 thereunder[6] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. OCC states that it will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2013–06 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–OCC–2013–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site (*http://www.theocc.com/about/publications/bylaws.jsp*). 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–OCC–2013–06 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12165 Filed 5–21–13; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 40.6.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69593; File No. SR–CTA/CQ–2013–03]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Eighteenth Charges Amendment To the Second Restatement of the CTA Plan and Tenth Charges Amendment To the Restated CQ Plan

May 16, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on May 10, 2013, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

participants (''Participants'') [3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[4] The amendments (''Reversal Amendments'') propose to reverse the fee changes for which the Participants filed in the Sixteenth [5] and Seventeenth [6] Charges Amendments to the CTA Plan and the Eighth [7] and Ninth [8] Charges Amendments to the CQ Plan.

Pursuant to Rule 608(b)(3)(i) under Regulation NMS,[9] the Participants designated the Reversal Amendments as establishing or changing a fee or other charge collected on their behalf in connection with access to, or use of, the facilities contemplated by the Plans. As a result, the Reversal Amendments became effective upon filing with the Commission. At any time within 60 days of the filing of the Reversal Amendments, the Commission may summarily abrogate the Reversal Amendments and require that the Reversal Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The Commission is publishing this notice to solicit comments from interested persons on the proposed Reversal Amendments.

I. Rule 608(a)

A. Purpose of the Amendments

On March 11, 2013, the Participants filed with the Commission for immediate effectiveness the Sixteenth Charges Amendment to the CTA Plan and the Eighth Charges Amendment to the CQ Plan (the ''March 11 Filings''). Those two amendments (the ''Two Amendments'') made a number of changes to the fees payable under the Plans in an effort to achieve greater simplicity and to reduce administrative burdens.

Among other things, they changed professional subscriber charges, nonprofessional subscriber charges, per-quote packet charges and access charges. They also added new redistribution charges, multiple feed charges and late-reporting charges, and the deletion of the Network B ticker charge.

In addition, they consolidated, simplified and updated the market data fee schedules under both Plans by replacing Schedules A–1 through A–4 of Exhibit E to the CTA Plan and Schedules A–1 through A–4 of Exhibit E to the CQ Plan with a single, consolidated fee schedule (the ''CTA/CQ Fee Schedule'').

The Participants announced that all of those proposed changes would become effective as of April 1, 2013.

On March 27, 2013, the Participants filed with the Commission for immediate effectiveness the Seventeenth Charges Amendment to the CTA Plan and the Ninth Charges Amendment to the CQ Plan (the ''March 27 Filings'').

The March 27 Filings amended the effective date for one of the professional subscriber device fee changes set forth in March 11 Filings, the change by which the Participants combined separate monthly device fees that professional subscribers pay for Network B last sale information under the CTA Plan and for Network B quotation information under the CQ Plan into one combined monthly fee of $24.00 per device for both last sale information and quotation information (the ''Network B Device Fee Change'').

The March 27 Filings delayed the effective date of the Network B Device Fee Change from April 1, 2013 to July 1, 2013.

After consultation with Commission staff, the Participants propose to reverse all of the fee changes (the ''Fee Simplification Changes'') set forth in the March 11 Filings and the March 27 Filings. As a result of the reversal, the Fee Simplification Changes set forth in the March 11 Filings would not be deemed to have taken effect on April 1, 2013 and the Fee Simplification Changes set forth in the March 27 Filings, would not take effect on July 1, 2013, meaning that the Participants would not implement the Fee Simplification Changes for the month of April 2013 or otherwise. The Participants anticipate re-examining the Fee Simplification Amendments with the potential for re-filing them at a later date.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of the Amendments

The Reversal Amendments shall be effective when this Agreement has been executed on behalf of each Participant and the amendment has been filed with the Commission. Once effective, the Reversal Amendment would cause the changes set forth in the March 11 Filings *not* to have become effective on April 1, 2013, and would cause the changes set forth in the March 27 amendments not to become effective on July 1, 2013. This means that the Participants would not implement the Fee Simplification Changes for the month of April 2013 or otherwise.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.[10]

[3] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc., BATS–Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC, NASDAQ OMX BX, Inc. (''Nasdaq BX''), NASDAQ OMX PHLX, Inc. (''Nasdaq PSX''), Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (formerly NYSE Amex, Inc.), and NYSE Arca, Inc. (''NYSE Arca'').

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[5] *See* Securities Exchange Act Release No. 69157 (March 18, 2013), 78 FR 17946 (March 25, 2013) (File No. SR–CTA/CQ–2013–01). The Commission received two comment letters on the proposal. *See also* Letter to Elizabeth M. Murphy, Secretary, Commission from Henry Schwartz, President and Founder, Trade Alert LLC, dated March 20, 2013 (''Schwartz Letter'') and from Kimberly Unger, Esq., CEO and Executive Director, The Security Traders Association of New York, Inc. (''STANY''), dated April 10, 2013 (''STANY Letter'').

[6] *See* Securities Exchange Act Release No. 69318 (April 5, 2013), 78 FR 21648 (April 11, 2013) (File No. SR–CTA/CQ–2013–02). The Commission received one comment on the proposal. *See also* Letter to the Commission from James Smith, Director, Hoffman Estates, IL, dated April 8, 2013.

[7] See *supra* note 5

[8] See *supra* note 6.

[9] 17 CFR 242.608(b)(3)(i).

[10] 15 U.S.C. 78k–1(c)(1)(D).

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

See Item I(C) above.

H. Description of Operation of Facility Contemplated by the Proposed Amendments

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) above.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) (Solely in Its Application to the Amendments to the CTA Plan)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CTA/CQ–2013–03 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–CTA/CQ–2013–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Amendments that are filed with the Commission, and all written communications relating to the Amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA.

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–CTA/CQ–2013–03 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2013–12163 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69598; File No. SR–BOX–2013–26]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Fee Schedule To Establish Fees for Jumbo SPY Option Transactions

May 16, 2013.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 10, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to establish fees for Jumbo SPY Option transactions on the BOX Market LLC (''BOX'') options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 10, 2013. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.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 Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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, Proposed Rule Change

1. Purpose

The Exchange received approval to list and trade option contracts overlying 1,000 shares of the SPDR® S&P® 500 Exchange-Traded Fund [5] (''Jumbo SPY Options'').[6] Except for the difference in the number of deliverable shares, Jumbo SPY Options have the same terms and contract characteristics as regular-sized options contracts (''standard options''), including exercise style.

The Exchange notes that in the approval order the Commission stated it believed ''the listing and trading of Jumbo SPY Options could benefit investors by providing them with an additional investment alternative.'' The Commission also stated ''that the listing and trading of Jumbo SPY Options could benefit investors by providing another means to mitigate risk in managing large portfolios, particularly for institutional investors.'' [7]

The Exchange will list Jumbo SPY Options beginning May 10, 2013. The purpose of this filing is to establish transaction fees for trading in Jumbo SPY Options. In considering the appropriate and equitable amount for these transaction fees, the Exchange considered that it would like to promote trading in this new product by keeping the Jumbo SPY Options fees low and easy for investors to understand. The Exchange believes that the proposed transaction fees strikes the appropriate balance between establishing reasonable fees and the Exchange's goal of introducing a new product to the marketplace that is competitively priced.

The following is a discussion of the existing Fee Schedule as it relates to the treatment of Jumbo SPY Options as compared to standard option contracts.

Section I. Exchange Fees

The Exchange proposes to create a new category of Section I (Exchange Fees) for Jumbo SPY Option transactions. Currently the Exchange assesses exchange fees based on the transaction type and account type. Specifically, the Exchange has distinct fees for Auction Transactions (transactions executed through the BOX Price Improvement Period, Solicitation, and Facilitation auction mechanisms), and non-Auction Transactions (transactions executed on the BOX Book). The account types on BOX are Public Customer, Professional Customer, Broker-Dealer, and Market Maker (see BOX Rule 100 Series for definitions of each).

The Exchange proposes to create a new category of Exchange Fees for all Jumbo SPY Option transactions, regardless of whether the transaction is through an Auction or executed on the BOX Book (therefore a Non-Auction Transaction). Specifically the Exchange proposes to assess a $0.00 per contract fee for Public Customers and a $0.25 per contract fee for Professional Customers and Broker-Dealers. For Market Makers the Exchange proposes to assess either a $0.25 per contract fee or a tiered per contract execution fee based upon the Participant's monthly average daily volume (''ADV'') detailed in Section I.B of the Fee Schedule, whichever one is lower. For example, under Section I.B of the Fee Schedule a Market Maker with a monthly ADV of 6,000 contracts would be charged a per contract fee of $0.30. This amount is higher than $0.25 so the Market Maker would only be charged $0.25 per contract in Jumbo SPY Option transactions. However, if the Market Maker had a monthly ADV of 60,000 contracts, the per contract fee would be lowered to $0.18. This fee is lower than $0.25 so the Market Maker would be charged $0.18 per contract in any Jumbo SPY Option transactions.

For Exchange Fees that are based upon a Participant's monthly average daily volume (''ADV'') as outlined in Sections I.A. and I.B., the Exchange proposes to count all Jumbo SPY Option transactions the same as standard option transactions. The Exchange currently gives volume incentives for Initiating Participants based on their ADV in Auction Transactions, and for Market Makers based on their ADV in all transactions executed on BOX. For example, a Broker-Dealer initiating a Jumbo SPY Option Primary Improvement Order would be charged according to the proposed Jumbo SPY Option transaction sub-section outlined above, or $0.25. However, this transaction would count toward that Broker-Dealer's ADV in Auction Transactions under Section I.A.

Section II. Liquidity Fees and Credits

The Exchange currently assesses liquidity fees and credits for all options classes traded on BOX (unless explicitly stated otherwise) that are applied in addition to any applicable Exchange Fees described above. The Exchange proposes to amend Section II.D (Exempt Transactions) to state that transactions in Jumbo SPY Options will also be considered exempt from all liquidity fees and credits.

Section III. Complex Order Transaction Fees

The Exchange currently assesses fees and rebates for all Complex Order executions. The Exchange proposes to assess all Complex Order executions involving Jumbo SPY Options the standard Complex Order transaction fee under this section.

Section III. [sic] Eligible Orders Routed to an Away Exchange

The Exchange is not proposing to adopt a routing fee for Jumbo SPY Options because Jumbo SPY Options are not currently traded on any other options exchange.

Section IV. [sic] Regulatory Fees

Presently the Exchange charges an Options Regulatory Fee (''ORF'') of $0.0030 per contract. The Options Regulatory Fee is assessed on each BOX Options Participant for all options transactions executed or cleared by the BOX Options Participant that are cleared by The Options Clearing Corporation (OCC) in the customer range regardless of the exchange on which the transaction occurs. The Exchange is proposing to charge the same rate for transactions in Jumbo SPY Options, since the costs to the Exchange to process quotes, orders, trades and the necessary regulatory surveillance programs and procedures in Jumbo SPY Options are the same as for standard contracts. As such, the Exchange feels that it is appropriate to charge the ORF at the same rate as the standard contract.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that

[5] ''SPDR®,'' ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' and ''Standard & Poor's 500'' are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

[6] *See* Securities Exchange Act Release No. 69511 (May 03, 2013) (Order Approving SR–BOX–2013–06).

[7] *Id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Exchange Fees

In setting the proposed fees for Jumbo SPY Option transactions, the Exchange considered that it would like to promote trading in this new product by keeping the Jumbo SPY Option transaction fees low and easy for investors to understand. The Exchange believes that these fees strike the appropriate balance between establishing new fees and the Exchange's goal of introducing new products to the marketplace that are competitively priced.

First, the Exchange believes the proposed fees are reasonable and equitable because they provide comparable pricing to the transaction fees currently assessed by the Exchange. The Exchange also believes it is equitable and not unfairly discriminatory that Public Customers be charged $0.00 for transactions in Jumbo SPY Options. Public Customers are currently not charged PIP Order and Agency Order transactions, and establishing the same fee will help promote Public Customer order flow in Jumbo SPY Options. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. As such, the Exchange believes the proposed fee for Public Customer transactions in Jumbo SPY Options is appropriate and not unfairly discriminatory. The Exchange believes it promotes the best interests of investors to have lower transaction costs for Public Customers, and that the proposed Jumbo SPY fees will attract Public Customer order flow to BOX.

Moreover, the Exchange believes that assessing a $0.25 fee for Jumbo SPY Option transactions by Professionals, Broker-Dealers, and in certain cases Market Makers, is reasonable because it will help promote trading in this new product. These Participants are currently charged higher fees for their Auction and Non-Auction Transactions, and assessing a lower fee than would otherwise be applicable will help generate trading in Jumbo SPY Options. The Exchange also believes that this fee is equitable and not unfairly discriminatory because these types of Participants are more sophisticated and have higher levels of order flow activity and system usage. This level of trading activity draws on a greater amount of BOX system resources than that of Public Customers, and thus, greater ongoing BOX operational costs. As such, rather than passing the costs of these higher order volumes along to all market participants, the Exchange believes it is more reasonable and equitable to assess those costs to the persons directly responsible. To that end, BOX aims to recover costs incurred by assessing Professionals, Broker-Dealers and Market Makers a higher fee for Jumbo SPY Option transactions than the fee proposed for Public Customers. Further, the Exchange believes that charging Professionals, Broker-Dealers and in certain cases Market Makers the same fee for all transactions in Jumbo SPY Options is not unfairly discriminatory as the fees will apply to these Participants equally. Additionally, Professionals and Broker-Dealers remain free to change the manner in which they access BOX.

Further, with regard to Jumbo SPY Option transaction fees, the Exchange believes it is equitable and not unfairly discriminatory for BOX Market Makers to have the opportunity to benefit from a potentially discounted fee than that charged to Broker-Dealers and Professional Customers. Market Makers also have additional obligations that are not applicable to Professional Customers and Broker-Dealers. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements. As such, the Exchange believes it is appropriate that Market Makers be charged potentially lower Jumbo SPY Option transaction fees on BOX than the fees charged to Broker-Dealers and Professional Customers.

The Exchange believes that the proposed tiered and potentially discounted Jumbo SPY Options fees for Market Makers that, on a daily basis, trade an average daily volume (as calculated at the end of the month) of more than 50,000 contracts on BOX represent a fair and equitable allocation of reasonable dues, fees, and other charges as they are aimed at incentivizing these Participants to provide a greater volume of liquidity. Specifically, Market Makers can provide higher volumes of liquidity and possibly lowering their Jumbo SPY Option fees may help attract a higher level of Market Maker order flow to BOX and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX. As such, the Exchange believes it is appropriate that Market Makers may potentially be charged lower Jumbo SPY Option transaction fees.

The Exchange believes that the proposed Market Maker tiered execution fee for Jumbo SPY Options contracts is equitable because it is available to all Market Makers on an equal basis and provides discounts that are reasonably related to the size of the contract and the value to an exchange's market quality associated with higher levels of market activity. For the reasons listed above, the Exchange believes it is appropriate that Market Makers be charged potentially lower transaction fees for Jumbo SPY Options on BOX when they provide greater volumes of liquidity to the market.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to combine the volume in standard options contracts and Jumbo SPY Options to calculate an Initiating Participant or Market Maker's ADV under Sections I.A. and I.B., because doing so will provide these Participants with an opportunity to qualify for lower transaction fees, therefore, incentivizing them to trade more order flow on the Exchange. Specifically, the Exchange believes that providing a volume discount to Options Participants that initiate auctions on Customer orders incentivizes these Participants to submit their customer orders to BOX, particularly into the PIP for potential price improvement. Even though they are treated differently in regards to the transaction fee assessed, Jumbo SPY Option Auction transactions are still Auction Transactions and Initiating Participants should receive the benefit of aggregating all their Auction transactions to more easily attain a discounted fee tier. The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to combine volume in standard options and Jumbo SPY Options to calculate the tier a Market Maker has reached because doing so will provide the Market Maker with an opportunity to qualify for increased rebates and, therefore, incentivize Participants to trade more of such order flow on the Exchange.

The Exchange believes that the proposed Jumbo SPY Option Exchange Fees will be applied in such a manner so as to be equitable among all BOX Participants. The Exchange believes the proposed fees are fair and reasonable.

Complex Order Transaction Fees

The Exchange proposes to assess Complex Orders involving Jumbo SPY Options the standard fees and credits outlined in Section III (Complex Order Transaction Fees). The Exchange believes the proposed Complex Order Fees applicable to Jumbo SPY Options are reasonable, equitable and non-

discriminatory because they further the Exchange's goal of promoting trading in this new product. The Exchange's Complex Order Book was launched on May 3, 2013 and the Exchange believes that adjusting the Complex Order fees for Jumbo SPY Option would unnecessarily confuse investors. Further, the Exchange believes that this proposal is not unfairly discriminatory as the assessment of standard Complex Order fees on Complex Order involving Jumbo SPY will apply equally to all Participants on the Exchange.

Liquidity Fees and Credits

BOX believes that it is reasonable, equitable and not unfairly discriminatory to exempt Jumbo SPY Option transactions from Liquidity Fees and Credits. Liquidity fees and credits are intended to attract order flow to BOX by offering incentives to all market participants to submit their orders to BOX. While the Exchange believes that listing Jumbo SPY Options will benefit investors by providing additional methods to trade highly liquid SPY options and mitigate the risks inherent in managing large portfolios, due to the unique and novel nature of Jumbo SPY Options the Exchange believes it is reasonable to not provide additional incentives to market participants to submit orders in this product.

Further, since SPY options are currently the most actively traded option class in terms of average daily volume (''ADV''),[10] the Exchange does not believe that an added incentive to increase volume in these issues is needed. In standard contract transactions BOX collects a fee from Participants that add liquidity on BOX and credits another Participant an equal amount for removing liquidity. Stated otherwise, the collection of these liquidity fees does not directly result in revenue to BOX, but simply allows BOX to provide the credit incentive to Participants to attract order flow. The Exchange believes that it is reasonable and equitable to exempt Jumbo SPY Options from liquidity fees and credits since these fees and credits for transactions offset one another in any particular transaction.

Further, the Exchange believes that this proposal is not unfairly discriminatory as the exemption of Jumbo SPY Options from liquidity fees and credits applies equally to all Participants and across all account types on the Exchange.

Routing Fees

The Exchange is not proposing to adopt a routing fee for Jumbo SPY Options because Jumbo SPY Options are not currently traded on any other options exchange.

Regulatory Fees

Finally, as discussed above, the Exchange believes that charging the same ORF for transactions in Jumbo SPY Options is reasonable, equitable and not unfairly discriminatory since the costs to the Exchange to process quotes, orders, trades and maintain the necessary regulatory surveillance programs and procedures in Jumbo SPY Options are the same as for standard options. The ORF is in place to help the Exchange offset regulatory expenses and the Exchange's cost of supervising and regulating Participants, including performing routine surveillances, and policy, rulemaking, interpretive, and enforcement activities remains the same for Jumbo SPY Options.

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. The Exchange believes that by offering Jumbo SPY Options it will encourage order flow to be directed to the Exchange, which will benefit all market participants by increasing liquidity on the Exchange. Specifically, the Exchange believes that adopting fees for Jumbo SPY Options that are low and easy for investors to understand will incentivize market participants to trade this new product and will not impose a burden on competition among various market participants on the Exchange but rather will continue to promote competition on the Exchange.

The Exchange believes that the adopting of the proposed fees for Jumbo SPY Options will not impose any unnecessary burden on intermarket competition because even though Jumbo SPY Options will be listed solely on the Exchange, the Exchange operates in a highly competitive market compromised of eleven exchanges, any of which may determine to trade a similar product. Also, Jumbo SPY Options should result in increased options volume and greater trading opportunities for all market participants.

The Exchange also believes that adopting fees on Jumbo SPY Options will not impose a burden on competition among various market participants on the Exchange. BOX currently assesses distinct standard contract Exchange fees for different account and transaction types. The Exchange believes that applying a similarly segmented fee structure to Jumbo SPY Options will result in these participants being charged proportionally for their transactions in Jumbo SPY Options.

Accordingly, the fees that are assessed by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged by other venues for other products, and therefore must continue to be reasonable and equitably allocated.

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 Exchange Act[11] and Rule 19b–4(f)(2) thereunder,[12] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[10] SPY ADV was 2,156,482 contracts in April 2012. ADV for the same period for the next four most actively traded options was: Apple Inc. (option symbol AAPL)—1,074,351; S&P 500 Index (option symbol SPX)—656,250; PowerShares QQQ Trust℠, Series 1 (option symbol QQQ)—573,790; and iShares® Russell 2000® Index Fund (option symbol IWM)—550,316. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2013–26 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–BOX–2013–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–26 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12168 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69594; File No. SR–CBOE–2013–051]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

May 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Footnote 13 of the Exchange Fees Schedule places caps on transaction fees for transactions involving a number of different trading strategies, and states that, to qualify transactions for such caps, a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions.[3] Footnote 6 of the Exchange Fees Schedule states that the Marketing Fee will not apply to transactions resulting from any of the strategies identified and/or defined in Footnote 13. However, Footnote 6 does not explicitly state that, in order for a strategy transaction identified/defined in Footnote 13 to gain exemption from being assessed the Marketing Fee, a rebate request must be submitted. Without the submission of such a request, the Exchange is unable to identify that a transaction involved one of the strategies, and therefore is unable to apply the caps described in Footnote 13 or exempt the transaction from the Marketing Fee pursuant to Footnote 6. These requests are submitted under Footnote 13, though, and when such requests are submitted, the Exchange also uses such requests to determine a strategy transaction's exemption from the Marketing Fee (pursuant to Footnote 6). However, to clarify that such requests must be submitted in order to gain such exemption, the Exchange proposes to amend Footnote 6 to state that the Marketing Fee will not apply to transactions resulting from any of the strategies identified and/or defined in Footnote 13 of the Fees Schedule (provided that a rebate request with supporting documentation is submitted to the Exchange within 3 business days of the transaction).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be 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 facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Footnote 13 for further descriptions of these caps, as well as the list and definitions of the qualifying strategies.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest. Clarifying the manner in which the Marketing Fee exemption for strategy transactions can be accomplished will eliminate any confusion and provide a clear procedure for applicants to get such an exemption for their strategy transactions, thereby removing impediments to and perfecting the mechanism of a free and open market.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change does not change to whom the Marketing Fee exemption for strategy executions applies; it merely states the manner for those executing such transactions to receive the exemption. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change because only applies to trading on CBOE and does not amend any fees, or to whom such fees apply. To the extent that the more clear explanation of the manner by which a market participant executing a strategy transaction may apply for such transaction's exemption from the Marketing Fee may be attractive to market participants on other exchanges, such market participants may elect to become market participants on CBOE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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) of the Act [6] and paragraph (f) of Rule 19b–4 [7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–051 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–2013–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–051 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12164 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69591; File No. SR–NYSEArca–2013–33]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade the International Bear ETF Under NYSE Arca Equities Rule 8.600

May 16, 2013.

I. Introduction

On March 21, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the International Bear ETF (''Fund'') under NYSE Arca Equities Rule 8.600. On April 3, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on April 10, 2013.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made certain technical changes to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 69303 (April 4, 2013), 78 FR 21475 (''Notice'').

with the Commission as an open-end management investment company.[5] The investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). The Fund will have a sub-adviser (''Sub-Adviser'') that provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon will serve as the administrator, custodian, transfer agent, and accounting agent for the Fund. According to the Exchange, the Adviser is not affiliated with a broker-dealer.[6]

Principle Investments

The Sub-Adviser will seek to achieve the Fund's investment objective by short selling a portfolio of foreign equity securities, U.S. exchange-listed and traded equity securities of non-U.S. organizations, and American Depositary Receipts (''ADRs''). The Fund may invest in such equity securities of any capitalization range and in any market sector at any time as necessary to seek to achieve the Fund's investment objective. Under normal circumstances,[7] at least 80% of the Fund's net assets will be such equity securities, which the Fund will short sell.

The Fund will be actively managed and thus will not seek to replicate the performance of a specified passive index of securities. Instead, it will use an active investment strategy to seek to meet its investment objective. The Sub-Adviser, subject to the oversight of the Adviser and the Board of Trustees, will have discretion on a daily basis to manage the Fund's portfolio in accordance with the Fund's investment objective and investment policies. The Sub-Adviser will utilize various fundamental and technical research techniques in security selection. In selecting short positions, the Sub-Adviser will seek to identify securities that may be overvalued and due for capital depreciation. Once a position is included in the Fund's portfolio, it will be subject to regular fundamental and technical risk management review.

The equity securities in which the Fund may invest consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, investments in master limited partnerships, rights, and REITs. The Fund may transact in equity securities traded in the U.S. on registered exchanges or, in the case of ADRs, the over-the-counter market. The Fund may short sell up to 10% of its total assets in unsponsored ADRs. The Fund may invest in the equity securities of foreign issuers, including the securities of foreign issuers in emerging market countries.[8]

The Fund may invest in issuers located outside the United States directly, or in financial instruments that are indirectly linked to the performance of foreign issuers. Examples of such financial instruments include ADRs, Global Depositary Receipts (''GDRs''), European Depositary Receipts (''EDRs''), International Depository Receipts (''IDRs''), ''ordinary shares,'' and ''New York shares.'' [9] Except for up to 10% of ADRs, which may be unsponsored, such financial instruments will all be listed and traded on registered exchanges in the U.S. or markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The Fund may engage regularly in short sales transactions in which the Fund sells a security it does not own. To complete such a transaction, the Fund must borrow or otherwise obtain the security to make delivery to the buyer. The Fund then is obligated to replace the security borrowed by purchasing the security at the market price at the time of replacement. The price at such time may be more or less than the price at which the security was sold by the Fund. Until the security is replaced, the Fund will be required to pay to the lender amounts equal to any dividends or interest, which accrue during the period of the loan. To borrow the security, the Fund also may be required to pay a premium, which would increase the cost of the security sold. The Fund may also use repurchase agreements to satisfy delivery obligations in short sales transactions. The proceeds of the short sale will be retained by the broker, to the extent necessary to meet the margin requirements, until the short position is closed out.

Until the Fund closes its short position or replaces the borrowed security, the Fund will: (a) Maintain a segregated account containing cash or liquid securities at such a level that (i) the amount deposited in the account plus the amount deposited with the broker as collateral will equal the current value of the security sold short and (ii) the amount deposited in the segregated account plus the amount deposited with the broker as collateral will not be less than the market value of the security at the time the security was sold short; or (b) otherwise cover the Fund's short position. The Fund may use up to 100% of its portfolio to engage in short sales transactions and collateralize its open short positions.

Other Investments

While the Fund will invest at least 80% of its assets as described above, the Fund may invest in certain other investments, as described below. The

[5] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On October 19, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 and the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677).

[6] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, (b) the Sub-Adviser is affiliated with a broker-dealer, or (c) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[8] Emerging or developing markets exist in countries that are considered to be in the initial stages of industrialization. The Fund will invest only in foreign equity securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[9] ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. The underlying securities may not necessarily be denominated in the same currency as the securities into which they may be converted. The underlying securities are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Generally, ADRs in registered form are designed for use in domestic securities markets and are traded on exchanges or over-the-counter in the U.S. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer, however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets, while GDRs are designed for use throughout the world. Ordinary shares are shares of foreign issuers that are traded abroad and on a U.S. exchange. New York shares are shares that a foreign issuer has allocated for trading in the U.S. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. dollars.

Fund may invest in exchange-traded funds (''ETFs'') registered pursuant to the 1940 Act, exchange-traded notes (''ETNs''),[10] and other exchange-traded products (together with ETFs and ETNs, collectively, ''ETPs'').[11] The Fund will invest only in ETPs that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The Fund may invest in several different types of investment companies from time to time, including mutual funds and business development companies (''BDCs''),[12] when the Adviser or the Sub-Adviser believes such an investment is in the best interests of the Fund and its shareholders. For example, the Fund may elect to invest in another investment company when such an investment presents a more efficient investment option than buying securities individually. The Fund also may invest in investment companies that are included as components of an index, such as BDCs, to seek to track the performance of that index. The Fund will invest only in BDCs that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The Fund may invest, under normal circumstances, up to 10% of its net assets in debt securities. Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. The Fund may invest in non-investment-grade securities.[13] The Fund may invest in variable and floating rate securities. On a day-to-day basis, the Fund may hold U.S. government securities,[14] short-term high quality fixed income securities, money market instruments, overnight and fixed-term repurchase agreements, cash, and cash equivalents with maturities of one year or less for investment purposes and to cover its short positions.

The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans.[15] The Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy.[16] However, the Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33⅓% of its assets. The Fund also may invest directly and indirectly in foreign currencies.

The Fund, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (*i.e.,* delivery and payment can take place between a month and 120 days after the date of the transaction). These securities are subject to market fluctuation and no interest accrues to the purchaser during this period. At the time the Fund makes the commitment to purchase securities on a when-issued or delayed-delivery basis, the Fund will record the transaction and thereafter reflect the value of the securities, each day, in determining the Fund's net asset value (''NAV''). The Fund will not purchase securities on a when-issued or delayed-delivery basis if, as a result, more than 15% of the Fund's net assets would be so invested.

To respond to adverse market, economic, political or other conditions, the Fund may refrain from short selling and increase its investment in U.S. government securities, short-term high quality fixed income securities, money market instruments, overnight and fixed-term repurchase agreements, cash and cash equivalents with maturities of one year or less. The Fund may hold little or no short positions for extended periods, depending on the Sub-Adviser's assessment of market conditions.

The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. In addition, the Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. This limitation does not apply to investments in securities issued or guaranteed by the U.S.

[10] ETNs are senior, unsecured unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees. ETNs have a maturity date and, generally, are backed only by the creditworthiness of the issuer. It is expected that the issuer's credit rating will be investment grade at the time of investment.

[11] ETPs may include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. The ETPs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETPs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The Fund may invest in ETPs that are pooled investment vehicles not registered pursuant to the 1940 Act. Closed-end funds are pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges.

[12] According to the Exchange, a BDC is a less common type of closed-end investment company that more closely resembles an operating company than a typical investment company. BDCs generally focus on investing in, and providing managerial assistance to, small, developing, financially troubled, private companies or other companies that may have value that can be realized over time and with management assistance.

[13] Non-investment-grade securities, also referred to as ''high-yield securities'' or ''junk bonds,'' are debt securities that are rated lower than the four highest rating categories by a nationally recognized statistical rating organization (for example, lower than Baa3 by Moody's Investors Service, Inc. or lower than BBB– by Standard & Poor's, a division of The McGraw-Hill Companies, Inc.) or are determined to be of comparable quality by the Adviser or the Sub-Adviser.

[14] The Fund may invest in U.S. government securities and U.S. Treasury zero-coupon bonds. Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance; U.S. Treasury bills, which have initial maturities of one-year or less; U.S. Treasury notes, which have initial maturities of one to ten years; and U.S. Treasury bonds, which generally have initial maturities of greater than ten years.

[15] The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. It is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amounts to more than 15% of the Fund's net assets.

[16] Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price. The Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents, or other portfolio securities equal in value to the Fund's obligations in respect of reverse repurchase agreements. Such reverse repurchase agreements could be deemed to be a borrowing, but are not senior securities.

Government, its agencies or instrumentalities, or shares of investment companies.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code. The Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Additional information regarding the Fund; Shares; investment objective, strategies, methodology, and restrictions; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[17]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[19] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[20] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and for the underlying securities, from the securities exchanges on which they are listed. Information regarding the equity securities, debt securities, fixed income instruments, and other investments held by the Fund will be available from the U.S. and non-U.S. securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session through one or more major market data vendors.[21] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's Web site will disclose the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[22] The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the New York Stock Exchange, LLC (normally 4:00 p.m. Eastern Time). The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services,[23] and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.[24]

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. 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.[25] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[26] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted.[27] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser, as the Reporting Authority, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio.[28] The Exchange states that the Adviser is not affiliated with a broker-dealer.[29]

[17] *See* Notice and Registration Statement, *supra* notes 4 and 5, respectively.

[18] 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).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[21] *See* Notice, *supra* note 4, 78 FR at 21479. According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds

[22] On a daily basis, the Fund's Web site will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable); name of security and financial instrument; number of shares and dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge

[23] *See* Notice, *supra* note 4, 78 FR at 21479.

[24] *See id.*

[25] *See id.*

[26] These reasons may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[27] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[28] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[29] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary

Continued

Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Commission notes that the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange,[30] will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continuing listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and 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.

(3) Except for up to 10% of ADRs, which may be unsponsored, the Fund will invest only in equity securities (including financial instruments that are linked to the performance of foreign issuers),[31] ETPs, and BDCs that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) 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; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[32] as provided by NYSE Arca Equities Rule 5.3.[33]

(7) The Fund will not invest in options contracts, futures contracts, or swap agreements.

(8) The Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities.

(10) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[34] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[35] that the proposed rule change (SR–NYSEArca–2013–33), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

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nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[30] The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[31] *See* notes 8 and 9, *supra,* and accompanying text.

[32] 17 CFR 240.10A–3.

[33] *See* Notice, *supra* note 4, 78 FR at 21478.

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69589; File No. SR–BYX–2013–014]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

May 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

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 Exchange proposes to modify fees applicable to Members and non-members in order to encourage use of connectivity that provides redundant access to the Exchange by eliminating any potential fees for logical ports [6] in connection with such redundant access.

The Exchange currently charges a monthly fee for ports used to enter orders in the Exchange's trading system and to receive data from the Exchange. The Exchange currently charges $400.00 per month per ''pair'' of any port type other than a Multicast PITCH Spin Server Port or a GRP Port.[7] Each pair of ports consists of one port at the Exchange's primary data center and one port at the Exchange's secondary data center. Rather than stating that the fee for logical ports is per ''pair'', the Exchange proposes to simplify the fee schedule by adding a footnote that states that logical port fees are limited to logical ports in the Exchange's primary data center and that no logical port fees will be assessed for redundant secondary data center ports. Although this change to fee schedule language will not result in any substantive change to Members or non-members, as the Exchange is already providing secondary data center ports free of charge, the Exchange believes that this is a simpler way to bill for ports rather than billing in pairs. Further, this will allow the Exchange to include the concept of a ''primary'' Multicast PITCH data feed, as described below, without confusion as related to the Exchange's primary data center.

In addition, the Exchange proposes to modify the description of the billing for ports related to the Exchange's Multicast PITCH data feed.[8] The Exchange currently provides 32 pairs of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports.[9] The Exchange charges customers $400.00 per month per additional set of 32 Multicast PITCH Spin Server Ports or additional pair of GRP Ports. Consistent with the change described above, the Exchange proposes to eliminate the concept of port ''pairs'' and instead maintain a fee schedule that imposes fees only for logical ports at the Exchange's primary data center. Thus, the Exchange will continue to provide at the Exchange's primary data center 32 Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free GRP Port and all redundant Multicast PITCH Spin Server Ports and GRP Ports at the secondary data center will be free of charge. Again, although not a substantive change for Members and non-members, the Exchange believes that this change simplifies the fee schedule and also indicates the Exchange's support for Members and non-members to establish sufficient connectivity for business continuity purposes.

Similarly, the Exchange proposes to modify its fee schedule in order to allow Members and non-members to take redundant Multicast PITCH data feeds from the Exchange. The Exchange's Multicast PITCH data feed is currently offered through two primary feeds, identified as the ''A feed'' and the ''C feed'', which contain the same information but differ only in the way such feeds are received. The Exchange is in the process of commencing to offer redundant versions of the Multicast PITCH data feed and does not intend for Members and non-members that connect to such feeds to incur additional port fees. As such, the Exchange is proposing to modify its description of Multicast PITCH logical port fees so that only ports necessary to take a primary feed (either A or C), and not redundant versions of such feed, are subject to logical port fees. Again, the Exchange wishes to encourage Members and non-members to establish connectivity for business continuity purposes, including in the event the Exchange's data center is fully operational but a specific version of an Exchange data feed becomes unavailable.

Based on the proposal, the change applies to Members that obtain ports for direct access to the Exchange, Sponsored Participants sponsored by Members to receive direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients.

2. Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes that its proposed changes to logical port fees are reasonable in light of the fact that all such changes are intended to ensure that Members and non-members are able to establish redundant connections to the Exchange without incurring additional logical port fees. In addition, the Exchange believes that the proposed changes to fees are equitably allocated among Exchange constituents as the cost savings for redundant connectivity will be available to all such constituents. The Exchange reiterates that the change

[6] A logical port is commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt.

[7] Thus, the charges apply to all Exchange FIX, FIXDROP, BOE, DROP, TCP PITCH, and TOP ports.

[8] The Multicast PITCH data feed is defined in Rule 11.22(c) as ''an uncompressed data feed that offers depth of book quotations and execution information based on equity orders entered into the System.''

[9] The Exchange notes that its fees for Multicast PITCH customers, including the current provision of certain ports free of charge, are designed to encourage use of the Exchange's Multicast PITCH data feed because the Exchange believes that the feed is its most efficient feed, and thus, will reduce infrastructure costs for both the Exchange and those who utilize the feed. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast PITCH Spin Server Ports and GRP Ports from the Exchange.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

to limit logical port fess to logical port fees at the primary data center is not a substantive change in that Exchange constituents currently receive without charge a corresponding port at the secondary data center for any port established at the primary data center.

The Exchange also believes that providing financial incentives to use Exchange technology that the Exchange believes is the most technologically efficient for the Exchange and its constituents is a fair and equitable approach to pricing. Accordingly, the Exchange believes that promotion of its Multicast PITCH data feed through the continued offering of free logical ports is fair and equitable. The Multicast PITCH data feed is available to all Members, and as such, all Members have the ability to receive applicable Multicast PITCH ports free of charge. Further, the Exchange believes that promoting the use of redundant connectivity is reasonable, fair and equitable and not unreasonably discriminatory as it is uniform in application amongst Members and non-members and should enable such participants to enhance their business continuity planning.

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. To the contrary, the Exchange will not assess new fees as part of the proposal. Instead, the proposal is focused on enhancing the clarity of the fee schedule and reducing barriers to Exchange Members and non-member constituents that may be seeking to establish redundant connections to the Exchange.

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.

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) of the Act [12] and paragraph (f) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2013–014 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–BYX–2013–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2013–014 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12161 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69590; File No. SR–NYSE–2013–32]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Proposing an Amendment to the Bylaws of Its Wholly-Owned Subsidiary, NYSE Regulation, Inc. (''NYSE Regulation''), To Eliminate a Requirement That Not Less Than Two Members of the Board of Directors of NYSE Regulation Must Qualify as ''Fair Representation Candidates''

May 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend an amendment to the bylaws of its wholly-owned subsidiary NYSE Regulation, Inc. (''NYSE Regulation'') to eliminate a requirement that not less than two members of the board of directors of NYSE Regulation must qualify as ''fair representation candidates'' (as that term is defined in those bylaws). A requirement that such directors constitute a minimum of 20% of the board would remain in place. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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 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 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 is proposing to amend the Fourth Amended and Restated Bylaws of NYSE Regulation (''NYSE Regulation Bylaws'') to eliminate the requirement that not less than two members of the NYSE Regulation board of directors must be ''fair representation candidates'' (as defined in the NYSE Regulation Bylaws).[3] However, the current requirement that such directors constitute a minimum of 20% of the board will continue to apply. If the number that is equal to 20% of the entire board of directors is not a whole number, such number will be rounded up to the next whole number, and a provision so stating would be added to the NYSE Regulation Bylaws.

As defined in the NYSE Regulation Bylaws, fair representation candidates are Board members who are determined by member organizations of the Exchange through a specified petition process (''Petition Candidates'') or, in the absence of a sufficient number of Petition Candidates, candidates recommended by the Director Candidate Recommendation Committee (the ''DCRC'') of NYSE Regulation. In addition, fair representation candidates for the NYSE Regulation Board must qualify as ''non-affiliated directors'' (as such term is defined in the NYSE Regulation Bylaws), i.e., U.S. Persons who are not members of the board of directors of NYSE Euronext and qualify as independent under the director independence policy of NYSE Regulation.[4] Finally, like all members of the NYSE Regulation Board except for the Chief Executive Officer, fair representation candidates must qualify as independent under the director independence policy of NYSE Regulation.[5]

The NYSE Regulation Bylaws also provide that the Board shall consist of not less than three persons and that the number of directors shall be fixed from time to time by the Exchange, as sole equity member of NYSE Regulation. The size of the NYSE Regulation Board is currently fixed at five members, of which four positions are currently filled and one is open.[6] The Exchange and NYSE Regulation believe that a Board consisting of five members is sufficiently large to effectively perform the Board's oversight responsibilities. In addition, with a Board size of five directors, the Exchange believes that retaining the requirement that at least two directors must be ''fair representation candidates'' is now unwarranted since such directors would constitute 40% of the Board rather than 20% as was the case when the number of directors was ten. The Exchange believes that the current process for selecting the 20% of directors who meet the fair representation requirement in Section 6(b)(3), is consistent with the Act.[7] The Exchange is not proposing to change the NYSE Regulation independence requirements.

The Exchange believes that elimination of the two-director minimum requirement for fair representation candidates is consistent with the governance structures of other national securities exchanges that have been approved by the Securities and Exchange Commission (the ''Commission''). For example, Article III, Section 5(e) of the By-Laws of the NASDAQ Stock Market LLC (''NASDAQ'') requires that the Regulatory Oversight Committee of the NASDAQ Board of Directors (the ''NASDAQ ROC''), which has an oversight role comparable to that of the NYSE Regulation Board, must consist of three members, each of whom must be a Public Director (i.e., ''a Director who has no material business relationship with a broker or dealer, [NASDAQ] or its affiliates, or FINRA'') and ''independent director'' as defined by NASDAQ Marketplace Rule 4200. There is no requirement that the NASDAQ ROC have any members who would be the equivalent of a fair representation candidate on the NYSE Regulation Board.

More recently, the Commission has approved a similar change to that proposed herein to the Operating Agreement of the Exchange and to the Bylaws of the Exchange's wholly owned subsidiary, NYSE Market, Inc.[8] These changes were approved subsequent to the Commission's approval of a structure for the board of NYSE Alternext US LLC (what is now NYSE MKT LLC), an affiliate of the Exchange, that included a requirement that at least 20% of the board of that organization constitute fair representation directors, but without the requirement that there be no less than two such directors.[9]

Accordingly, approval of the change to the NYSE Regulation Bylaws proposed herein will leave NYSE Regulation with a governance structure that is completely consistent with similar structures that the Commission has approved for the Exchange, for other subsidiaries and affiliates of the Exchange and for other national securities exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(3) of the Act[11] in particular in that it will assure a fair representation of the members of the Exchange in the selection of NYSE Regulation directors and in the administration of the affairs of the Exchange and NYSE Regulation. More specifically, the NYSE believes

[3] Section 6(b)(3) of the Act requires, as a condition for registration of a national securities exchange, the Commission to determine that, ''[t]he rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs . . . .'' *See* 15 U.S.C. 78f(b)(3).

[4] *See* Securities Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR–NYSE–2012–17) (approving the creation of the director independence policy of NYSE Regulation).

[5] The Bylaws of NYSE Regulation require that a majority of its Board consist of non-affiliated directors. The remaining directors are comprised of the Chief Executive Officer of NYSE Regulation and members of the board of directors of NYSE Euronext that qualify as independent under the NYSE Euronext independence policy. The Bylaws do not require any affiliated directors other than the Chief Executive Officer of NYSE Regulation.

[6] The number of directors on the NYSE Regulation board was reduced from ten to five in early 2013 in connection with the Financial Industry Regulatory Authority's (''FINRA'') completion of specified milestones in the regulatory services agreement by and among FINRA, NYSE Group, Inc., NYSE, NYSE Regulation, NYSE Arca, Inc., and NYSE MKT LLC pursuant to which FINRA assumed responsibility for performing the market surveillance and enforcement functions previously conducted by NYSE Regulation.

[7] The Exchange represents that the DCRC of NYSE Regulation is aware of and is in agreement with the proposed plan of implementation. There is otherwise no change to the ''fair representation'' candidate selection and petition process.

[8] Securities Exchange Act Release No. 59683 (April 1, 2009), 74 FR 15799–01 (April 7, 2009 (SR–NYSE–2009–12).

[9] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707, at 57711–12 (October 3, 2008) (SR–Amex–2008–62).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(3).

that, by eliminating the current NYSE Regulation Bylaw requirement for a minimum of two fair representation candidates on the NYSE Regulation Board, it will be able to improve administrative efficiency and effectiveness by operating with a smaller number of directors while continuing to fulfill its statutory obligations regarding the fair representation of members of the Exchange. The Exchange believes that the proposed rule change will also further the objectives of Section 6(b)(5) of the Act [12] as it will contribute to perfecting the mechanism of a free and open market and a national market system, in a manner that is consistent with the protection of 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. The proposed rule change relates solely to the implementation of a more efficient and effective governance structure for NYSE Regulation and will have no effect on the NYSE's business operations or competitive position.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–32 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–NYSE–2013–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–NYSE–2013–32, and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12159 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69583; File No. SR–Phlx–2013–53]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program To Allow Cabinet Trading To Take Place Below $1 per Option Contract

May 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program in Rule 1059, Accommodation Transactions, to allow cabinet trading to take place below $1 per option contract under specified circumstances (the ''pilot program'').

The text of the proposed rule change is set forth below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

NASDAQ OMX PHLX Rules

* * * * *

Options Rules

* * * * *

Rule 1059. Accommodation Transactions

(a)–(b) No change.

. . . *Commentary:* _____

.01 No change.

.02 Limit Orders Priced Below $1: Limit orders with a price of at least $0 but less than $1 per option contract may trade under the terms and conditions in Rule 1059 above in each series of option contracts open for trading on the Exchange, except that:

(a)–(c) No change.

(d) Unless otherwise extended, the effectiveness of the Commentary .02

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

terminates [June 1, 2013] *January 5, 2014* or, upon permanent approval of these procedures by the Securities and Exchange Commission, whichever occurs first.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot program in Commentary .02 of Exchange Rule 1059, Accommodation Transactions, which sets forth specific procedures for engaging in cabinet trades, to allow the Commission adequate time to consider permanently allowing transactions to take place on the Exchange in open outcry at a price of at least $0 but less than $1 per option contract.[3] Prior to the pilot program, Rule 1059 required that all orders placed in the cabinet were assigned priority based upon the sequence in which such orders were received by the specialist. All closing bids and offers would be submitted to the specialist in writing, and the specialist effected all closing cabinet transactions by matching such orders placed with him. Bids or offers on orders to open for the accounts of customer, firm, specialists and Registered Options Traders (''ROTs'') could be made at $1 per option contract, but such orders could not be placed in and must yield to all orders in the cabinet. Specialists effected all cabinet transactions by matching closing purchase or sale orders which were placed in the cabinet or, provided there was no matching closing purchase or sale order in the cabinet, by matching a closing purchase or sale order in the cabinet with an opening purchase or sale order.[4] All cabinet transactions were reported to the Exchange following the close of each business day.[5] Any (i) member, (ii) member organization, or (iii) other person who was a non-member broker or dealer and who directly or indirectly controlled, was controlled by, or was under common control with, a member or member organization (any such other person being referred to as an affiliated person) could effect any transaction as principal in the over-the-counter market in any class of option contracts listed on the Exchange for a premium not in excess of $1.00 per contract.

On December 30, 2010, the Exchange filed an immediately effective proposal that established the pilot program being extended by this filing. The pilot program allowed transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract until June 1, 2011.[6] These lower priced transactions are traded pursuant to the same procedures applicable to $1 cabinet trades, except that pursuant to the pilot program (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in options participating in the Penny Pilot Program.[7] On May 31, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2011 to consider whether to seek permanent approval of the temporary procedure.[8] On November 30, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until June 1, 2012.[9] On May 29, 2012, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2012.[10] On November 1, 2012, the Exchange filed an immediately effective proposal that extended the pilot program until June 1, 2013.[11] The Exchange now proposes an extension of the pilot program to allow additional time to consider its effects while the pilot program continues uninterrupted.

The Exchange believes that allowing a price of at least $0 but less than $1 will continue to better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might now be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out its position even at the $1 cabinet price (e.g., the series might be quoted no bid).

The Exchange hereby seeks to extend the pilot period for such $1 cabinet trading until January 5, 2014. The Exchange seeks this extension to allow the procedures to continue without interruption.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Section 6(b)(5) of the Act,[13] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that allowing for liquidations at a price less than $1 per option contract pursuant to

[3] Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market.

[4] Specialists and ROTs are not subject to the requirements of Rule 1014 in respect of orders placed pursuant to this Rule. Also, the provisions of Rule 1033(b) and (c), Rule 1034 and Rule 1038 do not apply to orders placed in the cabinet. Cabinet transactions are not reported on the ticker.

[5] *See* Exchange Rule 1059.

[6] Phlx Rule 1059, Commentary .02; *See* Securities Exchange Act Release No. 63626 (December 30, 2010), 76 FR 812 (January 6, 2011) (SR–Phlx–2010–185).

[7] Prior to the pilot, the $1 cabinet trading procedures were limited to options classes traded in $0.05 or $0.10 standard increments. The $1 cabinet trading procedures were not available in Penny Pilot Program classes because in those classes, an option series could trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). The pilot allows trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier) in all classes, including those classes participating in the Penny Pilot Program.

[8] *See* Securities Exchange Act Release No. 64571 (May 31, 2011), 76 FR 32385 (June 6, 2011) (SR–Phlx–2011–72).

[9] *See* Securities Exchange Act Release No. 65852 (November 30, 2011), 76 FR 76212 (December 6, 2011) (SR–Phlx–2011–156).

[10] *See* Securities Exchange Act Release No. 67106 (June 4, 2012), 77 FR 34108 (June 8, 2012) (SR–Phlx–2012–74).

[11] *See* Securities Exchange Act Release No. 68201 (November 9, 2012), 77 FR 68871 (November 16, 2012) (SR–Phlx–2012–131).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

the pilot program will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted. The Exchange believes the extension is of sufficient length to allow the Commission to assess the impact of the Exchange's authority to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option in accordance with its attendant obligations and conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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. The proposal does not raise any issues of intra-market competition because it applies to all options participants in the same manner.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may 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 operative delay so that the pilot program can continue without interruption. The Commission notes that the proposed rule change does not present any new, unique or substantive issues, but rather is merely extending an existing pilot program and that waiver of the 30-day operative delay will prevent confusion about whether the pilot program continues to be available. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative effective June 1, 2013.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–53 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M O'Neill,

Deputy Secretary.

[FR Doc. 2013–12189 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(a)(ii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69597; File No. SR–DTC–2013–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Its Fees Related to Certain Corporate Action Events

May 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2013, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) [3] of the Act and Rule 19b–4(f)(2) [4] thereunder, so that the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

As more fully discussed below, the proposed rule change is to modify DTC's Fee Schedule, to include revising, consolidating, and adding certain fees associated with corporate action events.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[6]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is for DTC to revise its Fee Schedule[7] related to certain services it provides associated with corporate action events, as discussed below.

Currently, DTC charges its Participants fees for different event types and processes associated with corporate actions. DTC's Fee Schedule includes 60 different fees related to corporate actions.[8]

Pursuant to the proposed rule change, DTC is reducing the number of fees associated with corporate actions and grouping such fees into five categories based on transaction type: Allocations, Elections, Voluntary Corporate Action Event Handling, Treasury Shares Adjustments, and Coupon Processing. As such, the total number of fees relating to corporate actions is reduced from 60 to16.

Additionally, DTC states that it is modifying the fee structure associated with the processing of corporate action events to align the fee with the appropriate level of risk and operational cost associated with the event. For example, DTC is reducing fees related to events with more automation and less complexity, since such events present less risk in processing. Examples of such events include those that require payments for principal and interest, redemptions, and cash and stock dividends.

Similarly, DTC is increasing fees for events that it believes present more risk and require manual intervention, such as mandatory and voluntary corporate events. DTC believes those events are considered riskier because they have greater complexity, and they require enhanced due diligence by DTC to ascertain exact event details, client entitlements, and payment calculations.

DTC is also introducing a new fee related to consent-only processing of reorganization events.[9] Currently, DTC Participants mail instructions on Consent-Only Events[10] directly to the balloting agents, which are traditionally delivered via a hard-copy letter of transmittal. However, recently, balloting agents and Participants have requested that DTC provide Participants with the ability to submit their elections on Consent-Only Events through PTOP. In an effort to streamline the process associated with Consent-Only Events, DTC agreed to allow Participants to submit such elections through PTOP. Accordingly, DTC will now charge balloting agents a processing fee for such submissions.

DTC is also implementing a new late notification of corporate events fee in the event that an agent does not comply with certain operational arrangements that require the agent to notify DTC no fewer than 10 days in advance of expiration of a corporate action event.[11]

Additionally, DTC is eliminating announcement-related fees and introducing a voluntary event handling fee.[12] Voluntary corporate actions will carry a handling fee because of the effort involved in DTC reviewing offering materials, confirming terms with issuers and agents, and then processing the event in DTC's system.

DTC is also increasing fees associated with the proxy record date meeting, in order to align the fees with the operational cost of handling those events.

DTC believes that the fee revisions discussed above are consistent with DTC's overall service pricing philosophy—to align service fees with the underlying costs and to discourage manual and exception processing.

Implementation Timeframe

The effective date for fee changes contained in the proposed rule change, as outlined above, is July 1, 2013.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act, as amended, specifically Section 17A(b)(3)(D),[13] and the rules and regulations thereunder applicable to DTC because the change clarifies and updates DTC's Fee Schedule to align fees with the costs of services provided, thus providing for the equitable allocation of reasonable fees among DTC's Members.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and Rule

[5] A schedule of the fee changes that are the subject of this notice is included in Exhibit 5 of the proposed rule change filing, available on the Commission's Web site under File No. SR–DTC–2013–06, Additional Materials, at *http://sec.gov/rules/sro/dtc.shtml*.

[6] The Commission has modified the text of the summaries prepared by DTC.

[7] *See* Guide to the 2013 DTC Fee Schedule, *http://dtcc.com/products/documentation/dtcfeeguide.pdf*.

[8] *Id.*

[9] DTC collects reorganization activity information through its Participant Tender Offer Program (''PTOP'') function. Examples of reorganization activity that DTC processes through PTOP include voluntary corporate actions, tenders and exchanges, and cash conversions. *See* Release No. 34–62119 (May 18, 2010), 75 FR 29374 (May 25, 2010) (for more information regarding events that DTC processes through PTOP).

[10] Increasingly, there are reorganization events that only require DTC Participants to make an election with respect to the event without surrendering securities (''Consent-Only Events''). Examples of Consent-Only Events include changes in the board of directors of an issuer and interest rate modifications to indentures.

[11] A late notification shortens the window of time for DTC Participants to contact their clients to make an election on an event. A late notification also requires additional DTC resources to review and announce both the event at issue and the other events that must be reprioritized accordingly.

[12] Under this revised corporate actions fee structure, DTC intends to charge a fee relating to the allocation required by the effectiveness of an event, rather than its announcement.

[13] 15 U.S.C. 78q–1(b)(3)(D).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

19b–4(f)(2) [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–DTC–2013–06 on the subject line.

Paper Comments

- Send 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–DTC–2013–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://dtcc.com/legal/rule_filings/dtc/2013.php*.

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–DTC–2013–06 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12167 Filed 5–21–13; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Federal Regulatory Enforcement Fairness Hearing; Region X Regulatory Fairness Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open meeting of the Regional (Region X) Small Business Regulatory Fairness Board.

SUMMARY: The (SBA) Office of the National Ombudsman is issuing this notice to announce the location, date and time of the Regional Small Business Regulatory Fairness hearing. This meeting is open to the public.

DATES: The hearing will be held on Thursday, June 6, 2013 from 9:00 a.m. to 11:30 a.m. (PST).

ADDRESSES: The meeting will be at The Rainer Club, 820—4th Avenue, Seattle, WA 98104–1653.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Sec. 222, SBA announces the meeting for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Region X Regulatory Fairness Board must contact José Méndez by May 30, 2013 in writing, by fax or email in order to be placed on the agenda. José Méndez, Case Management Specialist, SBA, Headquarters, 409 3rd Street SW., Suite 7125, Washington, DC, phone (202) 205–6178 and fax (202) 481–2707, email: *Jose.mendez@sba.gov.* Additionally, if you need accommodations because of a disability or require additional information, please contact José Méndez as well.

For more information on the Office of the National Ombudsman, see our Web site at *www.sba.gov/ombudsman.*

Dated: May 16, 2013.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2013–12106 Filed 5–21–13; 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 intent to waive the Nonmanufacturer Rule for commercial-type ovens, gas ranges, and ranges.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a class waiver of the Nonmanufacturer Rule for commercial-type ovens, gas ranges, and ranges, under Product Service Code (PSC) 7310 (Food Cooking, Baking, and Serving Equipment), under the North American Industry Classification System (NAICS) code 333318 (Other Commercial and Service Industry Machinery Manufacturing). According to the waiver request, no small business manufacturers supply this class of products to the Federal government. Thus, SBA is seeking information on whether there are small business manufacturers of these items. If granted, the waiver would allow otherwise qualified small businesses to supply the product of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses, Participants in the SBA's 8(a) Business Development (BD) program, or Women-Owned Small Businesses (WOSBs).

DATES: Comments and source information must be submitted July 8, 2013.

ADDRESSES: You may submit comments and source information, identified by docket number SBA–2013–0005, by any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov,* following the instructions for submitting comments; or

(2) *Mail/Hand Delivery/Courier:* Edward Halstead, Procurement Analyst, Small Business Administration, Office

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

of Government Contracting, 409 3rd Street SW., Suite 8022, Washington, DC 20416.

All comments will be posted on *www.regulations.gov.* If you wish to include within your comment confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *www.regulations.gov,* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery. In the submission, you must highlight the information that you consider CBI and explain why you believe this information should be withheld as confidential. SBA will make a final determination, in its sole discretion, as to whether the information is CBI and therefore will be published or withheld.

FOR FURTHER INFORMATION CONTACT: Edward Halstead, by telephone at (202) 205–9885, or by email at *edward.halstead@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 USC 637(a)(17), and SBA's implementing regulations require that recipients of Federal contracts for supplies which are set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses, Women-Owned Small Businesses (WOSBs), or Participants in SBA's 8(a) BD Program must 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). Section 8(a)(17)(B)(iv)(II) 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 been awarded or have performed a contract to supply a specific class of products to the Federal Government within 24 months from the date of the request for waiver, either directly or through a dealer, or have submitted an offer on a solicitation for that class of products within that time frame. 13 CFR 121.1202(c). SBA defines ''class of products'' as an individual subdivision within a (NAICS) Industry Number as established by the Office of Management and Budget in the NAICS Manual. 13 CFR 121.1202(d). In addition, SBA uses (PSCs) to further identify particular products within the NAICS code to which a waiver would apply.

On July 12, 2012, SBA received a request to waive the Nonmanufacturer Rule for commercial ovens and broilers, PSC 7310, under NAICS code 333319 (Other Commercial and Service Industry Machinery Manufacturing). SBA notes that at the time of the request, these items were classified under NAICS code 333319. However, effective October 1, 2012, SBA published revised NAICS codes and Small Business Size Standards, for purposes of Government procurement. As a result of this change, NAICS code 333319 is eliminated from the 2012 NAICS code listing and the items requested for waiver are now listed under the 2012 NAICS code 333318.

The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for the products described in this notice within 45 days after the date of publication in the **Federal Register**.

Dated: May 16, 2013.

Kenneth W. Dodds,

Director, Office of Government Contracting.

[FR Doc. 2013–12108 Filed 5–21–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Tweed-New Haven Regional Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Tweed-New Haven Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On November 26, 2012, the FAA determined that the noise exposure maps submitted by the City of Portland under Part 150 were in compliance with applicable requirements. On May 9, 2013, the New England Region Airports Division Regional Manager approved the noise compatibility program. Seventeen of the proposed program elements were approved, or approved in part. Four of the elements were disapproved.

DATES: *Effective Date:* The effective date of the FAA's approval of the Tweed-New Haven Regional Airport noise compatibility program is May 9, 2013.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (781) 238–7613. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Tweed-New Haven Regional Airport noise compatibility program, effective May 9, 2013.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas

preempted by the federal government; and

(d) program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Tweed-New Haven Airport Authority submitted to the FAA, on November 13, 2012, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 2010 to 2012. The Tweed-New Haven Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 26, 2012. Notice of this determination was published in the **Federal Register** on February 6, 2013.

The Tweed-New Haven Regional Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2018. The Tweed-New Haven Airport Authority requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on November 26, 2012, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 21 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The New England Region Airports Division Manager therefore approved the overall program effective May 9, 2013.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Acting Associate Administrator on May 9, 2013. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Tweed-New Haven Regional Airport.

Issued in Burlington, Massachusetts on May 9, 2013.

Mary Walsh,

Manager, Airports Division, FAA New England Region.

[FR Doc. 2013–12178 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0028]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document received on March 19, 2013, the North Shore Railroad Company (NSHR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223. FRA assigned the petition Docket Number FRA–2013–0028.

NSHR petitioned FRA to grant a waiver of compliance from the safety glazing provisions of 49 CFR 223.15, *Requirements for existing passenger cars.* NSHR seeks this relief for a 1954 M500-type coach car, Number ORXX 3247, which is being purchased from a private owner, Ontario Rail (ORRX), from Canada. Once acquired, NSHR intends to use ORXX 3247 in excursion, VIP, and shipper service on tracks owned by the Susquehanna Economic Development Authority–Council of Governments (SEDA–COG) Joint Rail Authority and the Union County Industrial Railroad. The component railroads in SEDA–COG include the Nittany and Bald Eagle Railroad (72 miles), the Lycoming Valley Railroad (34 miles), NSHR (38 miles), and the Shamokin Valley Railroad (25 miles). NSHR intends to operate on two additional lines. The West Shore Railroad Corporation owns approximately 5 miles on the Milton Branch; the Lewisburg and Buffalo Creek Railroad owns approximately 10 miles on the Winfield Branch on the Union County Industrial Railroad. ORXX 3247 will be operated at a maximum timetable track speed authorized by each of the railroads mentioned above, but not to exceed 50 mph.

ORXX 3247 has 24 side windows and no end windows. Nineteen side windows are 27″ × 61″ and five are 27″ × 25″. Each window has dual-pane-style laminated safety glazing (plated outside and laminated inside). None of the windows opens; however, the two emergency exit windows on each end of ORXX 3247 are clearly marked and have hammers mounted on them to break out glazing under emergency conditions. ORXX 3247 is equipped with flashlights, other battery-powered lighting, and an axe.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 8, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as is practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on May 16, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–12100 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0056]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MON AMI; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 21, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0056. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MON AMI is:

Intended Commercial Use of Vessel: ''Charter''.

Geographic Region: ''Florida, Maryland, Maine''.

The complete application is given in DOT docket MARAD–2013–0056 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: May 16, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–12177 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0058]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WIPE OUT 2; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 21, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0058. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WIPE OUT 2 is:

Intended Commercial Use of Vessel: Charter boat taking passengers of no

more than 6 plus 2 crew on rod and reel fishing trips.

Geographic Region: ''Michigan''.

The complete application is given in DOT docket MARAD–2013–0058 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 16, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–12188 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0060]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SAFARI; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 21, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0060. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SAFARI is:

Intended Commercial Use Of Vessel: ''Sailing charters, tourism''.

Geographic Region: ''Virginia, Maryland, Delaware, North Carolina''.

The complete application is given in DOT docket MARAD–2013–0060 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 16, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–12185 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0061]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OSPREY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 21, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0061. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., ET, Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OSPREY is:

Intended Commercial Use of Vessel: ''Passenger charter only''

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, and Puerto Rico''

The complete application is given in DOT docket MARAD–2013–0061 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 16, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–12182 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2013 0054]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LITTLE BAY WATCH; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 21, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0054. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LITTLE BAY WATCH is:

Intended Commercial Use Of Vessel: ''Snorkel trips and marine science education''

Geographic Region: ''Hawaii''

The complete application is given in DOT docket MARAD–2013–0054 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 16, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–12181 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0055]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel VELA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 21, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0055. Written comments may be submitted by

hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VELA is:

Intended Commercial Use Of Vessel: ''Sailing Charters''.

Geographic Region: Louisiana, Mississippi, Alabama, and Florida. The complete application is given in DOT docket MARAD–2013–0055 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 16, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–12179 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Applications Delayed More Than 180 Days

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535

Key to ''Reason for Delay''

1. Awaiting additional information from applicant

2. Extensive public comment under review

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis

4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

R—Renewal Request

P—Party To Exemption Request

Issued in Washington, DC, on May 15, 2013.

Donald Burger,

Chief, General Approvals and Permits.

NEW SPECIAL PERMIT APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
15720–N	Digital Wave Corporation Centennial, CO	3,1	05–31–2013
15747–N	UPS, Inc., Atlanta, GA	2,3	06–30–2013
15727–N	Blackhawk Helicopters, El Cajon, CA	4	05–31–2013
15745–N	Praxair Distribution, Inc., Danbury, CT	1,3	06–30–2013
	Renewal Special Permits Applications		
15510–R	TEMSCO Helicopters, Inc., Ketchikan, AK	3	05–31–2013

[FR Doc. 2013–12010 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before June 6, 2013.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 10, 2013.

Donald Burger,

Chief, General Approvals and Permits.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
6263–M		Amtrol, Inc., West Warwick, RI.	49 CFR 173.302(a)(1)	To modify the special permit to authorize a decrease in hydrostatic testing to 1.3 times MAWP and pneumatic testing to 1.1 times MAWP.
8228–M		U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Washington, DC.	49 CFR 172.101(c), 172.203(k), 172.102, and 173.56(b).	To modify the special permit to authorize an alternative packaging.
8843–M		Diamondback Industries, Inc., Crowley, TX.	49 CFR 173.228, 174.3, 175.3, 176.3, and 177.801.	To modify the special permit to authorize an inside diameter of 1–½ inches maximum for 4131 seamless steel tubing cylinder.
10704–M		Air Liquide America Speciality Gases LLC, Plumsteadville, PA.	49 CFR 173.302(a)(1), Part 172 Subpart C, E and F, Part 174, and Part 177.	To modify the special permit to authorize a lower minimum burst pressure and pressure rating.
11592–M		Amtrol Inc., West Warwick, RI.	49 CFR 173.306(g)	To modify the special permit to allow tanks 11 inches and under in diameter to be allowed to have a precharge of 70 psig and a wall stress of 38,000 psig.
11667–M		Weldship Corporation, Bethlehem, PA.	49 CFR 173.34(e), and 173.302(c)(2), (3), (4).	To modify the special permit and to authorize neck thread requirements that are consistant with CGA Pamphlet C–23.
12122–M		ARC Automotive, Inc., Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the and special permit to authorize new opening and attachment requirements.
12184–M		Weldship Corporation, Bethlehem, PA.	49 CFR 173.34(e)(1), 173.302(c)(2)(3)(4), 173.34(e)(3), 173.34(e)(4), and 173.34(e)(6).	To modify the special permit to authorize neck thread requirements that are consistant with CGA Pamphlet C–23.
13424–M		Taminco, Inc., Allentown, PA.	49 CFR 177.834(i)(3), 172.203(a), and 172.302(c).	To modify the special permit to remove the requirement that the video camera must be capable of panning.
14770–M		Nova Chemicals Corporation, Moon Township, PA.	49 CFR 173.242	To modify the special permit to authorize a Division 4.2 material.
14784–M		Weldship Corporation, Bethlehem, PA.	49 CFR 180.209(a) and (b)	To modify the special permit to authorize neck thread requirements that are consistant with CGA Pamphlet C–23.
14839–M		Matheson Tri-Gas, Inc., New Castle, PA.	49 CFR 180.209	To modify the special permit to authorize new flat bottom hole dimensions when conducting ultrasonic examination for the purpose of cylinder requalification.

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
14856–M	.....	BKC Industries, Inc., Creedmoor, NC.	49 CFR 180.209(a) and (b)	To modify the special permit to authorize neck thread requirements that are consistant with CGA Pamphlet C–23.
14920–M	.....	Nordco Rail Services & Inspection Technologies, Ridgefield, CT.	49 CFR 173.302a, 180.205, and 180.209.	To modify the special permit to authorize 3A, 3AL, and DOT–SP 12440 cylinders to be retested by a 100% ultrasonic examination, marking requirements equal to or less than 5 inches, different dimensions of a flat bottom hole to be used during ultrasonic examinations, and add an acceptable level of tolerance to the maximum achieved reference amplitude.
15558–M	.....	3M Company, St. Paul, MN.	49 CFR 173.212, 172.302(a)(c)	To modify the special permit to authorize alternative packaging with a maximum capacity of 400 gallons.

[FR Doc. 2013–12007 Filed 5–21–13; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 21, 2013.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 15, 2013.

Donald Burger,

Chief, General Approvals and Permits.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15845–N	.....	Michels Corporation, Brownsville, WI.	49 CFR 177.834(h) and § 178.700(c)(1).	To authorize the manufacture, marking, sale and use of non-DOT specification metal refueling tanks containing certain Class 3 liquids which are discharged from the refueling tanks without removing them from the vehicle on which they are transported. (mode 1).
15849–N	.....	Airgas USA, LLC, Tulsa, OK.	49 CFR 180.211 (c)(2)(i)	To authorize the repair of certain DOT 4L cylinders without requiring pressure testing as currently described in 49 CFR § 180.211(c)(2)(i). (modes 1, 2, 3, 4).
15850–N	.....	Chart Industries, New Prague, MN.	49 CFR 173.315	To authorize the manufacture, mark and sale of non-DOT specification tanks cars similar to DOT113C120W for the transportation in commerce of certain refrigerated liquid. (mode 2).
15851–N	.....	Conair Corporation, East Windsor, NJ.	49 CFR 171.2(k)	To authorize the transportation in commerce of certain used DOT 3AL cylinders that contain CO2, but not necessarily in an amount qualifying as hazardous material. (modes 1, 2, 3, 4, 5).

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15852–N	.....	Nuance Medical, LLC, Carlsbad, CA.	49 CFR 173.304a(a)(1); 173.306(a)	To authorize the transportation in commerce of small units of certain compressed gas, intended for medical use as limited quantities and/or ORM–D. (modes 1, 2, 3, 4, 5).
15853–N	.....	Praxair, Inc., Danbury, CT.	49 CFR 176.83	To authorize the transportation in commerce of certain DOT specification or UN certified packaging containing Division 2.1, 2.2, 2.3, 4.3, 5.1, 6.1, and Class 3 and Class 8 materials in a single Container Transport Unit (CTU) consisting of multiple compartments in lieu of segregation when transported by cargo vessel. (mode 3).
15856–N	.....	Matheson Tri-Gas, Basking Ridge, NJ.	49 CFR 180.209	To authorize the transportation in commerce of certain DOT 3AL cylinders manufactured from aluminum alloy 6061–T6 that are requalified every ten years rather than every five years using 100% ultrasonic examination and are not required to be hammer tested prior to each refill. (modes 1, 2, 3, 4, 5).
15858–N	.....	Thunderbird Cylinder, Inc., Phoenix, AZ.	49 CFR 180.209	To authorize the transportation in commerce of certain DOT 3AL cylinders that are requalified every ten years rather than every five years using 100% ultrasonic examination. (modes 1, 2, 3, 4).
15860–N	.....	Apple Inc., Cupertino, CA.	49 CFR 173.185(a)	To authorize the transportation in commerce of damaged or defective lithium ion batteries that do not meet the requirements of § 173.185(a) (modes 1,3).
15861–N	.....	Petro2Go, LLC., De Pere, WI.	49 CFR 177.834(h) and 178.700(c)(1).	To authorize the manufacture, mark and sale of non-bulk refueling tanks as intermediate bulk containers which are authorized to be unloaded from the motor vehicle when transporting various Class 3 hazardous materials. (mode 1).

[FR Doc. 2013–12009 Filed 5–21–13; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0090; Notice No. 13–04]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Preparations for the 43rd Session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) and the 25th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation, and the Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA and OSHA will conduct a joint public meeting in preparation for United Nations meetings being held in Geneva, Switzerland, this summer. PHMSA is hosting the morning portion of the meeting to discuss proposals in preparation for the 43rd session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held June 24 to 28, 2013, in Geneva. During this meeting, PHMSA is also soliciting comments relative to potential new work items which may be considered for inclusion in its international agenda. OSHA is hosting the afternoon portion of the meeting to discuss proposals in preparation for the 25th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held July 1 to 3, 2013, in Geneva. OSHA, along with the U.S. Interagency GHS Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting.

DATES: Wednesday, June 12, 2013.
PHMSA Session: 9:00 a.m. to 12:00 noon.
OSHA Session: 2:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the DOT Headquarters, West Building, Conference Rooms 8–10, 1200 New Jersey Avenue SE., Washington, DC 20590.

Registration: It is requested that attendees pre-register for this meeting by completing the form at *http://www.phmsa.dot.gov/hazmat/regs/international*. Attendees may pre-register for the morning PHMSA session, the afternoon OSHA session, or both sessions of the meeting. Failure to pre-register may delay your access to the building. Participants attending in person are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Conference call-in and ''live meeting'' capability will be provided for this meeting. Specific information on call-in and live meeting access will be posted when available at *http://www.phmsa.dot.gov/hazmat/regs/*

international and at *http://www.osha.gov/dsg/hazcom/*.

FOR FURTHER INFORMATION CONTACT: Vincent Babich or Kevin Leary, Office of Hazardous Materials Safety, International Standards, Department of Transportation, Washington, DC 20590; telephone (202) 366–8553. You may also contact Maureen Ruskin, Office of Chemical Hazards-Metals, OSHA, Directorate of Standards and Guidance, Department of Labor, Washington, DC 20210; telephone: (202) 693–1950.

Copies of this **Federal Register** notice can be obtained as follows: Electronic copies are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as other relevant information, is available also on the OSHA Web page at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. PHMSA Public Meeting (June 12, 2013; 9:00 a.m.–12:00 noon)

The primary purpose of this meeting will be to prepare for the 43rd session of the UNSCOE TDG. The 43rd session of the UNSCOE TDG is the first meeting scheduled for the 2013–2014 biennium. The UNSCOE will consider proposals for the 19th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations which will be implemented within relevant domestic, regional, and international regulations from January 1, 2017. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3age.html*.

General topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters
- Listing, classification and packing
- Electric storage systems
- Transport of gases
- Miscellaneous proposals of amendments to the Model Regulations
- Electronic data interchange for documentation purposes
- Cooperation with the International Atomic Energy Agency (IAEA)
- Global harmonization of transport of dangerous goods regulations
- Globally Harmonized System of Classification and Labelling of Chemicals (GHS)

Following the 43rd session of the UNSCOE TDG, a copy of the Sub-Committee's report will be available at the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html*. PHMSA's site at *http://www.phmsa.dot.gov/hazmat/regs/international* provides additional information regarding the UNSCOE TDG and related matters.

II. OSHA Public Meeting (June 12, 2013; 2:00 p.m.–5:00 p.m.)

OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views orally and in writing for consideration in developing U.S. Government positions for the upcoming UNSCEGHS meeting. Interested stakeholders may also provide input on issues related to OSHA's activities in the U.S.—Canada Regulatory Cooperation Council (RCC) at the meeting. The public is invited to attend and is requested to pre-register for the meeting by following the instructions provided in the ''REGISTRATION'' section of this notice.

General topics on the agenda include:

- Review of Working papers
- Review of 2013–2014 Program of work
- Working Group updates
- Regulatory Cooperation Council (RCC) Update

Information on the work of the UNSCEGHS, including meeting agendas, reports, and documents from previous sessions, can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division Web site located at the following web address: *http://www.unece.org/trans/welcome.html*. The UNSCEGHS bases its decisions on Working Papers. The Working Papers for the 25th session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c42013.html*. Informal Papers submitted to the UNSCEGHS are used either as a mechanism to provide information to the subcommittee or as the basis for future Working Papers. Informal Papers for the 25th session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c4inf25.html*. The program of work for the 2013–2014 biennium is presented in the Report of the Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals on its twenty-fourth session and its addendum located at *http://www.unece.org/fileadmin/DAM/trans/doc/2012/dgac10c4/ST-SG-AC10-C4-48e.pdf* and *http://www.unece.org/fileadmin/DAM/trans/doc/2012/dgac10c4/ST-SG-AC10-C4-48a1e.pdf*.

Issued in Washington, DC, on May 16, 2013.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–12193 Filed 5–21–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Actions on Special Permit Applications

AGENCY: Pipeline And Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (April to April 2013). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued In Washington, DC, on May 15, 2013.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
Modification Special Permit Granted			
12531–M	Worthington Cylinder Corporation, Columbus, OH.	49 CFR 173.302(a), 173.304(a), 173.304(d), 178.61(b), 178.61(f), 178.61(g), 178.61(i) and 178.61(k).	To modify the special permit to authorize a Class 8 packaging group I material.
New Special Permit Granted			
15650–N	JL Shepherd & Associates, San Fernando, CA.	49 CFR 173.416	To authorize the continued transportation in commerce of certain DOT Specification 20WC radioactive material packagings after October 1, 2008. (mode 1).
15723–N	Entegris Chaska, MN	49 CFR 173.212; 173.213; 173.240; 173.241; 176.83.	To authorize the transportation in commerce of Division 4.1 and 4.2 material in non-specification packaging. (modes 1, 2, 3, 4).
15725–N	Toray Composites (America), Tacoma, WA.	49 CFR 173.225	To authorize the one-time one-way transportation of organic peroxides in packaging not authorized by the competent authority approval. (mode 1).
15820–N	Korean Air, Arlington, VA	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4).
Emergency Special Permit Granted			
15797–N	Veolia ES Technical Solutions, L.L.C., Flanders, NJ.	49 CFR 172.320 and 173.56(b).	To authorize the transportation of certain unapproved airbag modules by motor vehicle for disposal. (mode 1).
Modification Special Permit Withdrawn			
14562–M	The Lite Cylinder Company, Franklin, TN.	49 CFR 173.304 a(a)(1)	To modify the special permit to authorize larger cylinders.
New Special Permit Withdrawn			
15842–N	Department of Defense, Scotts AFB, IL.	49 CFR 173.62	To authorize the transportation in commerce of Rockets, UN0181 in alternative packaging (modes 1, 2, 3, 4).

Denied

10964–M Request by Kidde Aerospace & Defense Wilson, NC April 04, 2013. To modify the permit to authorize a rework procedure to allow fire extinguishers which were ''steel stamped'' to e returned to within original specifications.

15746–N Request by Siex Burgos, Spain, April 25, 2013. To authorize the transportation in commerce of Division 2.2 gases in cylinders manufactured according to the European Directive for Transportable Pressure Vessels.

15834–N Request by Multistar Ind., Inc. Othello, WA April 01, 2013. To authorize the transportation in commerce of certain portable tanks and cargo tanks containing anhydrous ammonia that do not have manufacturer's data reports required by 49 CFR 180.605(1).

15821–N Request by Circor Instrumentation Technologies dba, Hoke Incorporated Spartanburg, SC April 26, 2013. To authorize the manufacture, marking, sale and use of non-DOT specification cylinders manufactured from Hastelloy C–276 (ASTM B622) material.

[FR Doc. 2013–12005 Filed 5–21–13; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35719 (Sub-No. 1)]

Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company and Stillwater Central Railroad Company

By petition filed on February 28, 2013, Grainbelt Corporation (GNBC) requests that the Board partially revoke a class exemption to permit the amended trackage rights arrangements between grantee GNBC and grantors BNSF Railway Company (BNSF) and Stillwater Central Railroad Company (SLWC) exempted in *Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company and Stillwater Center Railroad Company,* Docket No. FD 35719, served and published in the **Federal Register** on March 15, 2013 (78 FR 16,570), to expire on February 1, 2023.

In the notice of exemption, BNSF and SLWC each agreed to grant amended trackage rights to GNBC, which together allow GNBC to provide local service to a grain shuttle facility in Headrick, Okla. Specifically, BNSF has amended its trackage rights to permit local service over the connecting line between the connection with SLWC east of Long, Okla. (milepost 668.73), and Altus, Okla. (milepost 688.00), and SLWC has amended its trackage rights to permit local service between Snyder Yard (milepost 664.00) and its connection with BNSF east of Long (milepost 668.73).

Prior to the amended trackage rights arrangement exempted in Docket No. FD 35719, GNBC already held overhead trackage rights granted by the predecessor of BNSF between Snyder Yard (milepost 664.00) and Quanah, Tex. (milepost 723.30), under which GNBC has the right to interchange at Quanah with BNSF and Union Pacific Railroad Company. BNSF subsequently sold a portion of the subject trackage to SLWC. The original trackage rights were supplemented in 2009 to allow GNBC to

operate between Snyder and Altus, with the right to perform limited local service at Long. *See Grainbelt Corp.—Trackage Rights Exemption—BNSF Ry. and Stillwater Cent. R.R.,* FD 35332 (STB served Dec. 17, 2009). GNBC also requests that the Board extend the expiration date of these supplemental trackage rights, previously set for 2019 by the Board,[1] to February 1, 2023, so that the supplemental and amended trackage rights will expire simultaneously.

Discussion and Conclusion

Although the parties have expressly agreed on the duration of the amended trackage rights arrangements, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. *See, e.g., Norfolk S. Ry.—Temporary Trackage Rights Exemption—Grand Trunk W. R.R. and Wisconsin Cent. Ltd.,* FD 35715 (Sub-No. 1) (STB served Mar. 19, 2013); *Union Pac. R.R.—Trackage Rights Exemption—The Burlington N. & Santa Fe Ry.,* FD 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

Under 49 U.S.C. 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) Continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

GNBC's amended trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7).[2] See R.R. Consolidation Procedures—Trackage Rights Exemption, 1 I.C.C.2d 270 (1985). Granting partial revocation in these circumstances would promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the agreements expire, thereby promoting the rail transportation policy goals at 49 U.S.C. 10101(2), (4), (5), (7), and (15). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and would not result in an abuse of market power. This is because the amended trackage rights that are the subject of the exemption are being granted solely to allow GNBC to provide local service between the grain shippers located on GNBC and the grain shuttle facility located at Headrick in single line service. Therefore, we will grant the petition and permit the amended trackage rights exempted in Docket No. FD 35719 to expire on February 1, 2023. We will also grant GNBC's request that the Board extend the date to February 1, 2023, for expiration of the supplemental trackage rights previously granted in Docket No. FD 35332 and set to expire in 2019 in Docket No. FD 35332 (Sub-No. 1), so that the supplemental and amended trackage rights will expire simultaneously.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of the amended trackage rights, we will impose the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho* (*Oregon Short Line*), 360 I.C.C. 91 (1979).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.

2. Under 49 U.S.C. 10502, the trackage rights described in Docket No. FD 35719 are exempted, as discussed above, to permit the trackage rights to expire on February 1, 2023, subject to the employee protective conditions set forth in *Oregon Short Line.*

3. GNBC's supplemental trackage rights granted in Docket No. FD 35332, previously set to expire in 2019 in Docket No. FD 35332 (Sub-No. 1), are permitted to expire on February 1, 2023, subject to the employee protective conditions set forth in *Oregon Short Line.*

4. Notice will be published in the **Federal Register** on May 22, 2013.

5. This decision will be effective on June 21, 2013. Petitions to stay must be filed by June 3, 2013. Petitions for reconsideration must be filed by June 11, 2013.

Decided: May 16, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–12201 Filed 5–21–13; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Grainbelt Corp.—Trackage Rights Exemption—BNSF Ry. and Stillwater Cent. R.R.,* FD 35332 (Sub-No. 1) (STB served Mar. 12, 2010).

[2] GNBC points out that, although the trackage rights are only temporary, because the rights include more than just overhead trackage rights and will remain in effect for more than one year, they do not qualify for the Board's exemption for temporary trackage rights at 49 CFR 1180.2(d)(8).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury Department.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List'') the names of two entities, whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.'' The designations by the Director of OFAC, pursuant to Executive Order 13382, were effective on May 15, 2013.

DATES: The designations by the Director of OFAC, pursuant to Executive Order 13382, were effective on May 15, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On May 15, 2013, the Deputy Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated two entities whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. AL FIDA INTERNATIONAL GENERAL TRADING, Emirates Concord Hotel, Office Tower 16th Floor Flat 1065, P.O. Box: 28774, Dubai, United Arab Emirates [NPWMD] [IFSR].
2. AL HILAL EXCHANGE, P.O. Box 28774, Shop # 9 & 10 Ground Floor, Emirates Concorde Hotel, Al Maktoum Road, Deira Dubai, United Arab Emirates; Emirates Concorde Hotel & Residence, Almaktoum Street, P.O. Box 28774, Dubai, United Arab Emirates [NPWMD] [IFSR].

Dated: May 15, 2013.

John Battle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2013–12213 Filed 5–21–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Identification of Entity Pursuant to the Iranian Transactions and Sanctions Regulations and Executive Order 13599

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one entity identified as the Government of Iran under the Iranian Transactions and Sanctions Regulations (the ''ITSR''), 31 CFR Part 560, and Executive Order 13599, and has updated OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List'') to identify this entity.

DATES: The identification by the Director of OFAC of the entity identified in this notice, pursuant to the ITSR and Executive Order 13599, was announced on May 9, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On February 5, 2012, the President issued Executive Order 13599, ''Blocking Property of the Government of Iran and Iranian Financial Institutions'' (the ''Order''). Section 1(a) of the Order blocks, with certain exceptions, all property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch.

Section 7(d) of the Order defines the term ''Government of Iran'' to mean the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran.

Section 560.211 of the ITSR implements Section 1(a) of the Order. Section 560.304 of the ITSR defines the term ''Government of Iran'' to include: ''(a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran; (b) Any person owned or controlled, directly or indirectly, by the foregoing; and (c) Any person to the extent that such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly, for or on behalf of any of the foregoing; and (d) Any other person determined by the Office of Foreign Assets Control [(''OFAC'')] to be included within [(a) through (c)].'' Section 560.313 of the ITSR further defines an ''entity owned or controlled by the Government of Iran'' to include ''any corporation, partnership, association, or other entity in which the Government of Iran owns a 50 percent or greater interest or a controlling interest, and any entity which is otherwise controlled by that government.'' On May 9, 2013, the Director of OFAC identified one entity as meeting the definition of the Government of Iran pursuant to the Order and the ITSR, and updated the SDN List to identify this entity.

The listing for this entity is as follows:

1. SAMBOUK SHIPPING FZC, FITCO Building No. 3, Office 101, 1st Floor, P.O. Box 50044, Fujairah, United Arab Emirates; Office 1202, Crystal Plaza, P.O. Box 50044, Buhaira Corniche, Sharjah, United Arab Emirates [IRAN] (Linked To: CAMBIS, Dimitris).

Dated: May 9, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–12219 Filed 5–21–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Re-pricing of the 2012 and 2013 United States America the Beautiful Quarters Silver Proof Set®, 2013 United States Mint Silver Proof Set®, and 2013 United States Mint Congratulations Set

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the re-pricing of the 2012 and 2013 United States Mint America the Beautiful Quarters Silver Proof Set, the 2013 United States Mint Silver Proof Set, and the 2013 United States Mint Congratulations Set.

2012 and 2013 United States Mint America the Beautiful Quarters Silver Proof Sets will be offered for sale at a price of $36.95.

2013 United States Mint Silver Proof Set will be offered for sale at a price of $60.95.

2013 United States Mint Congratulations Set will be offered for sale at a price of $59.95.

FOR FURTHER INFORMATION CONTACT: J. Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: May 16, 2013.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2013–12097 Filed 5–21–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 78 Wednesday,
No. 99 May 22, 2013

Part II

Department of Justice

Antitrust Division

United States v. Anheuser-Busch InBev SA/NV, Grupo Modelo S.A.B de C.V.; Proposed Final Judgment and Competitive Impact Statement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Anheuser-Busch InBev SA/NV, Grupo Modelo S.A.B de C.V.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Anheuser-Busch InBev SA/NV, et al.,* Civil Action No. 1:13–CV–00127. On January 31, 2013, the United States filed a Complaint alleging that the proposed acquisition by Anheuser-Busch InBev SA/NV (''ABI'') of the remaining interest in Grupo Modelo S.A.B. de C.V. (''Modelo'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on April 19, 2013, requires ABI and Modelo to divest Modelo's entire U.S. business to Constellation Brands, Inc. (''Constellation''), or if that transaction fails to consummate, to an alternative purchaser.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to James Tierney, Chief, Networks and Technology Enforcement Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 7700, Washington, DC 20530, (telephone: 202–307–6200).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court For the District of Columbia

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 7100, Washington, DC 20530, Plaintiff, v. ANHEUSER–BUSCH InBEV SA/NV, Brouwerijplein 1, Leuven, Belgium 3000, and GRUPO MODELO S.A.B de C.V, Javier Barros Sierra No. 555 Piso 3, Col. Zedec, Santa Fe, Mexico D.F., C.P. 01210, Defendants.

Civil Action No. 13–127 (RWR)

Judge Richard W. Roberts

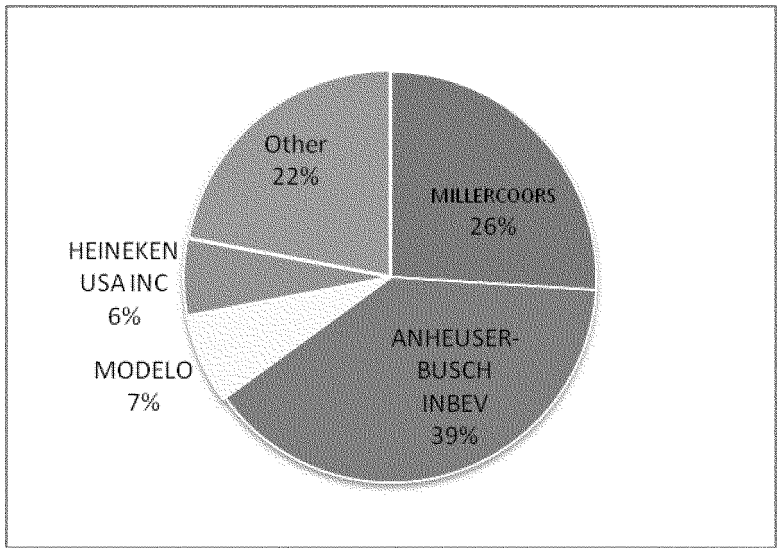
Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action under the antitrust laws of the United States to enjoin the proposed acquisition by Anheuser-Busch InBev SA/NV (''ABI'') of the remainder of Grupo Modelo S.A.B. de C.V. (''Modelo'') that it does not already own, and to obtain equitable and other relief as appropriate. The United States alleges as follows:

I. Introduction

1. Fundamental to free markets is the notion that competition works best and consumers benefit most when independent firms battle hard to win business from each other. In industries characterized by a small number of substantial competitors and high barriers to entry, further consolidation is especially problematic and antithetical to the nation's antitrust laws. The U.S. beer industry—which serves tens of millions of consumers at all levels of income—is highly concentrated with just two firms accounting for approximately 65% of all sales nationwide. The transaction that is the subject of this Complaint threatens competition by combining the largest and third-largest brewers of beer sold in the United States. The United States therefore seeks to enjoin this acquisition and prevent a serious violation of Section 7 of the Clayton Act.

2. Today, Modelo aggressively competes head-to-head with ABI in the United States. That competition has resulted in lower prices and product innovations that have benefited consumers across the country. The proposed acquisition would eliminate this competition by further concentrating the beer industry, enhancing ABI's market power, and facilitating coordinated pricing between ABI and the next largest brewer, MillerCoors, LLC. The approximate market shares of U.S. beer sales, by dollars, are illustrated below:



3. Defendants' combined national share actually understates the effect that eliminating Modelo would have on competition in the beer industry, both because Modelo's share is substantially higher in many local areas than its national share, and because of the interdependent pricing dynamic that already exists between the largest brewers. As the two largest brewers, ABI and MillerCoors often find it more profitable to follow each other's prices than to compete aggressively for market share by cutting price. Among other things, ABI typically initiates annual price increases in various markets with the expectation that MillerCoors' prices will follow. And they frequently do.

4. In contrast, Modelo has resisted ABI-led price hikes. Modelo's pricing strategy—''The Momentum Plan''—seeks to narrow the ''price gap'' between Modelo beers and lower-priced premium domestic brands, such as Bud and Bud Light. ABI internal documents acknowledge that Modelo has put ''increasing pressure'' on ABI by pursuing a competitive strategy *directly at odds* with ABI's well-established practice of leading prices upward.

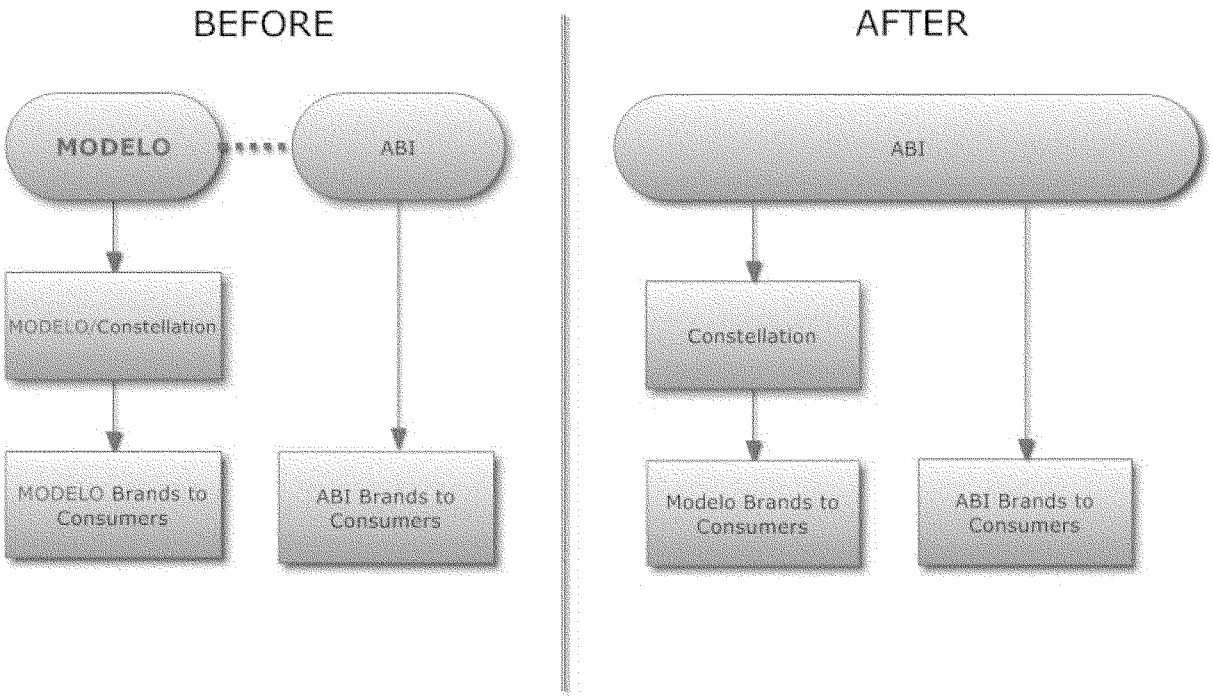
5. Because Modelo prices have not closely followed ABI's price increases, ABI and MillerCoors have been forced to offer lower prices and discounts for their brands to discourage consumers from ''trad[ing] up'' to Modelo brands. If ABI were to acquire the remainder of Modelo, this competitive constraint on ABI's and MillerCoors' ability to raise their prices would be eliminated.

6. The acquisition would also eliminate the substantial head-to-head competition that currently exists between ABI and Modelo. The loss of this head-to-head competition would enhance the ability of ABI to unilaterally raise the prices of the brands that it would own post-acquisition, and diminish ABI's incentive to innovate with respect to new brands, products, and packaging.

7. Accordingly, ABI's acquisition of the remainder of Modelo would likely substantially lessen competition and is therefore illegal under Section 7 of the Clayton Act, 15 U.S.C. 18.

8. For no substantial business reason other than to avoid liability under the antitrust laws, ABI has entered into an additional transaction contingent on the approval of its acquisition of the remainder of Modelo. Specifically, ABI has agreed to sell Modelo's existing 50% interest in Crown Imports LLC (''Crown'') [1]—which currently imports Modelo beer into the United States—to Crown's other owner, Constellation Brands, Inc. (''Constellation''). ABI and Constellation have also negotiated a proposed Amended and Restated Importer Agreement (the ''supply agreement''), giving Constellation the exclusive right to import Modelo beer into the United States for ten years. Constellation, however, would acquire no Modelo brands or brewing facilities under this arrangement—it remains simply an importer, required to depend on ABI for its supply of Modelo-branded beer. At the end of the ten-year period, ABI could unilaterally terminate its agreement with Constellation, thereby giving ABI full control of all aspects of the importation, sale, and distribution of Modelo brands in the United States.

9. The sale of Modelo's 50% interest in Crown to Constellation is designed predominantly to help ABI win antitrust approval for its acquisition of Modelo, creating a façade of competition between ABI and its importer. In reality, Defendants' proposed ''remedy'' eliminates from the market Modelo—a particularly aggressive competitor—and replaces it with an entity wholly dependent on ABI. As Crown's CEO wrote to his employees after the acquisition was announced: ''Our #1 competitor will now be our supplier . . . it is not currently or will not, going forward, be 'business as usual.' '' The deficiencies of the ''remedy'' are apparent from the illustrations of the pre- and post-transaction chains of supply below, demonstrating how the ''remedy'' transforms horizontal competition into vertical dependency:



[1] Headquartered in Chicago, Illinois, Crown is a 50/50 joint venture between Modelo and Constellation. Crown sells and markets Modelo's beers in the United States as the exclusive importer of Modelo beers.

10. Constellation has already shown through its participation in the Crown joint venture that it does not share Modelo's incentive to thwart ABI's price leadership. In fact, Constellation consistently has urged following ABI's price leadership. Given that Constellation was inclined to follow ABI's price leadership before the acquisition, it is unlikely to reverse course after—when it would be fully dependent on ABI for its supply of beer, and will effectively be ABI's business partner. In addition, Constellation would need to preserve a strong relationship with ABI to encourage ABI from exercising its option to terminate the agreement after 10 years.

11. For these reasons, as alleged more specifically below, the proposed acquisition, if consummated, would likely substantially lessen competition in violation of Section 7 of the Clayton Act. The likely anticompetitive effects of the proposed acquisition would not be prevented or remedied by the sale of Modelo's existing interest in Crown to Constellation and the supply agreement between ABI and Constellation.

II. Jurisdiction, Venue, and Interstate Commerce

12. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants ABI and Modelo from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

13. This Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337, and 1345.

14. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391.

15. Defendants are engaged in, and their activities substantially affect, interstate commerce. ABI and Modelo annually brew several billion dollars worth of beer, which is then advertised and sold throughout the United States.

16. This Court has personal jurisdiction over each Defendant. Modelo has consented to personal jurisdiction in this judicial district. ABI is found and transacts business in this District through its wholly-owned United States subsidiaries, over which it exercises control.

III. The Defendants and the Transactions

17. ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI is the largest brewer and marketer of beer sold in the United States. ABI owns and operates 125 breweries worldwide, including 12 in the United States. It owns more than 200 beer brands, including Bud Light, the number one brand in the United States, and other popular brands such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Goose Island, and Beck's.

18. Modelo is a corporation organized and existing under the laws of Mexico, with headquarters in Mexico City, Mexico. Modelo is the third-largest brewer of beer sold in the United States. Modelo's Corona Extra brand is the top-selling import in the United States. Its other popular brands sold in the United States include Corona Light, Modelo Especial, Negra Modelo, Victoria, and Pacifico.

19. ABI currently holds a 35.3% direct interest in Modelo, and a 23.3% direct interest in Modelo's operating subsidiary Diblo, S.A. de C.V. ABI's current part-ownership of Modelo gives ABI certain minority voting rights and the right to appoint nine members of Modelo's 19-member Board of Directors. However, as ABI stated in its most recent annual report, ABI does ''not have voting or other effective control of . . . Grupo Modelo.''

20. ABI and Modelo executives agree that there is currently vigorous competition between the ABI and Modelo brands in the United States. Indeed, firewalls are in place to ensure that the ABI members of Modelo's Board do not become privy to information about the pricing, marketing, or distribution of Modelo brands in the United States.

21. Modelo executives run its day-to-day business, including Modelo's relationship and interaction with its U.S. importer, Crown. Modelo owns half of Crown and may exercise an option at the end of 2013, to acquire in 2016, the half of Crown it does not already own. Today, Modelo must approve Crown's general pricing parameters, changes in strategic direction, borrowing activities, and capital investment above certain thresholds. Modelo also sets the global strategic themes for the brands it owns. Essentially, Crown is a group of employees who report to Crown's owners: Modelo and Constellation.

22. The acquisition gives complete control of Modelo to ABI, and gives ABI full access to competitively sensitive information about the sale of the Modelo brands in the United States—access that ABI does not currently enjoy. ABI presently has no day-to-day role in Modelo's United States business and is walled off from strategic discussions regarding Modelo sales in the United States.

23. On June 28, 2012, ABI agreed to purchase the remaining equity interest from Modelo's owners, thereby obtaining full ownership and control of Modelo, for about $20.1 billion.

24. As noted above, in an effective acknowledgement that the acquisition of Modelo raises significant competitive concerns, Defendants simultaneously entered into another transaction in an attempt to ''remedy'' the competitive harm caused by ABI's acquisition of the remainder of Modelo: ABI has agreed to sell Modelo's existing 50% interest in Crown to Constellation, so that Crown, previously a joint-venture between Modelo and Constellation, would become wholly owned by Constellation. As part of this strategy, ABI and Constellation have negotiated a supply agreement giving Constellation the exclusive right to import Modelo beer into the United States for ten years. These transactions are contingent on the closing of ABI's acquisition of Modelo.

IV. The Relevant Market

A. Description of the Product

25. ''Beer'' is comprised of a wide variety of brands of alcoholic beverages usually made from a malted cereal grain, flavored with hops, and brewed via a process of fermentation. Beer is substantially differentiated from other alcoholic beverages by taste, quality, alcohol content, image, and price.

26. In addition to brewing, beer producers typically also sell, market, and develop multiple brands. Marketing and brand building take various forms including sports sponsorships, print advertising, national television campaigns, and increasingly, online marketing. For example, Modelo has recently invested in ''more national advertising [and] more national sports'' in order to ''build the equity of [its] brands.''

27. Most brewers use distributors to merchandise, sell, and deliver beer to retailers. Those end accounts are primarily grocery stores, large retailers such as Target and Walmart, and convenience stores, liquor stores, restaurants, and bars which, in turn, sell beer to the consumer. Beer brewed in foreign countries may be sold to an importer, which then arranges for distribution to retailers.

28. ABI groups beer into four segments: Sub-premium, premium, premium plus, and high-end. The sub-premium segment, also referred to as the value segment, generally consists of lager beers, such as Natural and Keystone branded beer, and some ales and malt liquors, which are priced lower than premium beers, made from less expensive ingredients and are generally perceived as being of lower

quality than premium beers. The premium segment generally consists of medium-priced American lager beers, such as ABI's Budweiser, and the Miller and Coors brand families, including the ''light'' varieties. The premium plus segment consists largely of American beers that are priced somewhat higher than premium beers, made from more expensive ingredients and are generally perceived to be of superior quality. Examples of beers in the premium plus category include Bud Light Lime, Bud Light Platinum, Bud Light Lime-a-Rita and Michelob Ultra.

29. The high-end category includes craft beers, which are often produced in small-scale breweries, and imported beers. High-end beers sell at a wide variety of price points, most of which are higher than premium and premium plus beers. The high-end segment includes craft beers such as Dogfish Head, Flying Dog, and also imported beers, the best selling of which is Modelo's Corona. ABI also owns high-end beers including Stella Artois and Goose Island. Brewers with a broad portfolio of brands, such as ABI, seek to maintain ''price gaps'' between each segment. For example, premium beer is priced above sub-premium beer, but below premium plus beer.

30. Beers compete with one another across segments. Indeed, ABI and Modelo brands are in regular competition with one another. For example, Modelo, acting through Crown in the United States, usually selects ''[d]omestic premium'' beer, namely, ABI's Bud Light, as its benchmark for its own brands' pricing.

B. Relevant Product Market

31. Beer is a relevant product market and line of commerce under Section 7 of the Clayton Act. Other alcoholic beverages, such as wine and distilled spirits, are not sufficiently substitutable to discipline at least a small but significant and nontransitory increase in the price of beer, and relatively few consumers would substantially reduce their beer purchases in the event of such a price increase. Therefore, a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount.

C. Relevant Geographic Market

32. The 26 local markets, defined by Metropolitan Statistical Areas (''MSAs''),[2] identified in Appendix A, are relevant geographic markets for antitrust purposes. Each of these local markets currently benefits from head-to-head competition between ABI and Modelo, and in each the acquisition would likely substantially lessen competition.

33. The relevant geographic markets for analyzing the effects of this acquisition are best defined by the locations of the customers who purchase beer, rather than by the locations of breweries. Brewers develop pricing and promotional strategies based on an assessment of local demand for their beer, local competitive conditions, and local brand strength. Thus, the price for a brand of beer can vary by local market.

34. Brewers are able to price differently in different locations, in part, because arbitrage across local markets is unlikely to occur. Consumers buy beer near their homes and typically do not travel to other areas to buy beer when prices rise. Also, distributors' contracts with brewers and their importers contain territorial limits and prohibit distributors from reselling beer outside their territories. In addition, each state has different laws and regulations regarding beer distribution and sales that would make arbitrage difficult.

35. Accordingly, a hypothetical monopolist of beer sold into each of the local markets identified in Appendix A would likely increase its prices in that local market by at least a small but significant and non-transitory amount.

36. Therefore, the MSAs identified in Appendix A are relevant geographic markets and ''sections of the country'' within the meaning of Section 7 of the Clayton Act.

37. There is also competition between brewers on a national level that affects local markets throughout the United States. Decisions about beer brewing, marketing, and brand building typically take place on a national level. In addition, most beer advertising is on national television, and brewers commonly compete for national retail accounts. General pricing strategy also typically originates at a national level. A hypothetical monopolist of beer sold in the United States would likely increase its prices by at least a small but significant and non-transitory amount. Accordingly, the United States is a relevant geographic market under Section 7 of the Clayton Act.

V. ABI'S Proposed Acquisition Is Likely To Result in Anticompetitive Effects

A. The Relevant Markets are Highly Concentrated and the Merger Triggers a Presumption of Illegality in Each Relevant Market

38. The relevant markets are highly concentrated and would become significantly more concentrated as a result of the proposed acquisition.

39. ABI is the largest brewer of beer sold in the United States. MillerCoors is the second-largest brewer of beer sold in the United States. MillerCoors owns the Miller and Coors brands and also many smaller brands including Blue Moon and Keystone Light. Modelo is the third-largest brewer of beer sold in the United States, with annual U.S. sales of $2.47 billion, 7% market share nationally, and a market share that is nearly 20% in some local markets. Modelo owns the Corona, Modelo, Pacifico, and Victoria brands. The remaining sales of beer in the U.S. are divided among Heineken and fringe competitors, including many craft brewers, which the Defendants characterize as being ''fragmented . . . small player[s].''

40. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (''HHI''). Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition. Markets in which the HHI is in excess of 2,500 points are considered highly concentrated.

41. The beer industry in the United States is highly concentrated and would become substantially more so as a result of this acquisition. Market share estimates demonstrate that in 20 of the 26 local geographic markets identified in Appendix A, the post-acquisition HHI exceeds 2,500 points, in one market is as high as 4,886 points, and there is an increase in the HHI[3] of at least 472 points in each of those 20 markets. In six of the local geographic markets, the post-merger HHI is at least 1,822, with an increase of the HHI of at least 387 points, and in each of those six markets the parties combined market share is greater than 30%.

42. In the United States, the Defendants will have a combined

[2] As defined by the SymphonyIRI Group, a market research firm, whose data is commonly used by industry participants.

[3] Even if these concentration measures are modified to reflect ABI's current partial ownership of Modelo, the effective levels of concentration would still support a presumption of illegality.

market share of approximately 46% post-transaction. The post-transaction HHI of the United States beer market will be greater than 2800, with an increase in the HHI of 566.

43. The market concentration measures, coupled with the significant increases in concentration, described above, demonstrate that the acquisition is presumed to be anticompetitive.

B. Beer Prices in the United States Today are Largely Determined by the Strategic Interactions of ABI, MillerCoors, and Modelo

1. ABI's Price Leadership

44. ABI and MillerCoors typically announce annual price increases in late summer for execution in early fall. The increases vary by region, but typically cover a broad range of beer brands and packs. In most local markets, ABI is the market share leader and issues its price announcement first, purposely making its price increases transparent to the market so its competitors will get in line. In the past several years, MillerCoors has followed ABI's price increases to a significant degree.

45. The specifics of ABI's pricing strategy are governed by its ''Conduct Plan,'' a strategic plan for pricing in the United States that reads like a how-to manual for successful price coordination. The goals of the Conduct Plan include: ''yielding the highest level of followership in the short-term'' and ''improving competitor conduct over the long-term.''

46. ABI's Conduct Plan emphasizes the importance of being ''Transparent—so competitors can clearly see the plan;'' ''Simple—so competitors can understand the plan;'' ''Consistent—so competitors can predict the plan;'' and ''Targeted—consider competition's structure.'' By pursuing these goals, ABI seeks to ''dictate consistent and transparent competitive response.'' As one ABI executive wrote, a ''Front Line Driven Plan sends Clear Signal to Competition and Sets up well for potential conduct plan response.'' According to ABI, its Conduct Plan ''increases the probability of [ABI] sustaining a price increase.''

47. The proposed merger would likely increase the ability of ABI and the remaining beer firms to coordinate by eliminating an independent Modelo—which has increasingly inhibited ABI's price leadership—from the market.

2. Modelo Has Constrained ABI's Ability to Lead Prices Higher

48. In the past several years, Modelo, acting through Crown, has disrupted ABI's pricing strategy by declining to match many of the price increases that were led by ABI and frequently joined by MillerCoors.

49. In or around 2008, Crown implemented its ''Momentum Plan'' with Modelo's enthusiastic support. The Momentum Plan is specifically designed to grow Modelo's market share by shrinking the price gaps between brands owned by Modelo and domestic premium brands. By maintaining steady pricing while the prices of premium beer continues to rise, Modelo has narrowed the price gap between its beers and ABI's premium beers, encouraging consumers to trade up to Modelo brands. These narrowed price gaps frustrate ABI and MillerCoors because they result in Modelo gaining market share at their expense.

50. Under the Momentum Plan, Modelo brand prices essentially remained flat despite price increases from ABI and other competitors, allowing Modelo brands to achieve their targeted price gaps to premium beers in various markets. After Modelo implemented its price gap strategy, Modelo brands experienced market share growth.

51. Because of the Momentum Plan, prices on the Modelo brands have increased more slowly than ABI has increased premium segment prices. Thus, as ABI has observed, in recent years, the ''gap between Premium and High End has been reducing . . . due to non [high-end] increases.'' Over the same time period, the high-end segment has been gaining market share at the expense of ABI's and MillerCoors' premium domestic brands.

52. In internal strategy documents, ABI has repeatedly complained about pressure resulting from price competition with the Modelo brands: ''Recent price actions delivered expected Trade up from Sub Premium, however it created additional share pressure from volume shifting to High End where we under-index;'' ''Consumers switching to High End accelerated by price gap compression;'' ''While relative Price to MC [MillerCoors] has remained stable the lack of Price increase in Corona is increasing pressure in Premium.'' An ABI presentation from November 2011 stated that ABI's strategy was ''Short-Term []: We must slow the volume trend of High End Segment and cannot let the industry transform.'' Owning the Modelo brands will enable ABI to implement that strategy.

53. The competition that Modelo has created by not following ABI price increases has constrained ABI's ability to raise prices and forced ABI to become more competitive by offering innovative brands and packages to limit its share losses and to attract customers.

54. Competition between the ABI and Modelo brands has become increasingly intense throughout the country, particularly in areas with large Latino populations. As the country's Latino population is forecasted to grow over time, ABI anticipates even more rigorous competition with Modelo. Here are some examples of how the Modelo brands have disciplined the pricing of the market leaders.

a. California

55. Modelo, acting through Crown, has not followed ABI-led price increases in local markets in California. Because of the aggressive pricing of the Modelo brands, ABI's Bud and Bud Light brands have reported ''[h]eavy share losses'' to Modelo's Corona and Modelo Especial.

56. Consumers in California markets have been the beneficiaries of Modelo's aggressive pricing. ABI rescinded a planned September 2010 price increase because of the share growth of Modelo's Corona brand. ABI also considered launching a new line, ''Michelob Especial,''—a Modelo brand is ''Modelo Especial''—targeted at California's Latino community. ABI recognized that Corona's strength in California meant that ''innovation [is] required.'' Nonetheless, Modelo continued ''eating [Budweiser's] lunch'' in California to the point where ABI's Vice President of Sales observed that ''California is a burning platform'' for ABI, which was ''losing share'' because of ''price compression'' between ABI and Corona.

57. In 2012, ABI's concern about losing market share to Modelo in California caused a full-blown price war. ABI implemented ''aggressive price reductions . . .'' that were seen as ''specifically targeting Corona and Modelo.'' These aggressive discounts appear to have been taken in support of ABI's expressed desire to discipline Modelo's aggressive pricing with the ultimate goal of ''driv[ing] them to go up'' in price. Both MillerCoors and Modelo followed ABI's price decrease, and ABI responded by dropping its price even further to stay competitive.

b. Texas

58. Competition between the ABI and Modelo brands in local markets in Texas is also intense. Beginning in or about 2010, some Modelo brands began to be priced competitively with ABI's Bud Light, the leading domestic brand throughout the state. Modelo brands also benefited from price promotions and regional advertising. By 2011, Modelo had begun gaining market share at ABI's expense. ABI recognized

Modelo's aggressive price strategy as an issue contributing to its market share loss.

59. Ultimately, aggressive pricing on some Modelo brands forced ABI to lower its prices in local Texas markets, and adjust its marketing strategy to better respond to competition from the Modelo brands. According to an ABI Regional Vice President of Sales, ABI set ''pricing, packaging and retail activity targets to address [Modelo's] Especial'' brand. In both Houston and San Antonio, ABI also lowered the price of its Bud Light Lime brand to match Modelo Especial price moves.

c. New York City

60. In the summer of 2011, Modelo, acting through Crown, sought to narrow the gap in price between its brands and those of domestic premiums, including the ABI brands in New York City. ABI became concerned that ''price compression on Premiums by imports'' would cause premium domestic customers to trade up to the import segment. ABI's Vice President of Sales observed that the price moves on Modelo's Corona brand, and corresponding reductions by MillerCoors and Heineken, meant that ABI would ''need to respond in some fashion,'' and that its planned price increase was ''in jeopardy.'' ABI ultimately chose to respond by delaying a planned price increase to ''limit the impact of price compression on our premiums as a result of the Corona . . . deeper discount.''

C. The Elimination of Modelo Would Likely Result in Higher Coordinated Pricing by ABI and MillerCoors

61. Competition spurred by Modelo has benefitted consumers through lower beer prices and increased innovation. It has also thwarted ABI's vision of leading industry prices upward with MillerCoors and others following. As one ABI executive stated in June 2011, ''[t]he impact of Crown Imports not increasing price has a significant influence on our volume and share. The case could be made that Crown's lack of increases has a bigger influence on our elasticity than MillerCoors does.'' ABI's acquisition of full ownership and control of Modelo's brands and brewing assets will facilitate future pricing coordination.

D. The Loss of Head-to-Head Competition Between ABI and Modelo Would Likely Result in Higher Prices on ABI-Owned Brands

62. ABI is intent on moderating price competition. As it has explained internally: ''We must defend from value-destroying pricing by: [1] Ensuring competition does not believe they can take share through pricing[,] [and] [2] Building discipline in our teams to prevent unintended initiation or acceleration of value-destroying actions.'' ABI documents show that it is increasingly worried about the threat of high-end brands, such as Modelo's, constraining its ability to increase premium and sub-premium pricing. In general, ABI, as the price leader, would prefer a market not characterized by aggressive pricing actions to take share because ''[t]aking market share this way is unsustainable and results in lower total industry profitability which damages all players long-term.''

63. ABI would have strong incentives to raise the prices of its beers were it to acquire Modelo. First, lifting the price of Modelo beers would allow ABI to further increase the prices of its existing brands across all beer segments. Second, as the market leader in the premium and premium-plus segments, and as a brewer with an approximate overall national share of approximately 46% of beer sales post-acquisition, coupled with its newly expanded portfolio of brands, ABI stands to recapture a significant portion of any sales lost due to such a price increase, because a significant percentage of those lost sales will go to other ABI-owned brands.

64. Therefore, ABI likely would unilaterally raise prices on the brands of beer that it owns as a result of the acquisition.

E. The Loss of Head-to-Head Competition Between ABI and Modelo Will Harm Consumers Through Reduced New Product Innovation and Product Variety

65. Modelo's growth in the United States has repeatedly spurred product innovation by ABI. In 2011, ABI decided to ''Target Mexican imports'' and began planning three related ways of doing so. First, ABI would acquire the U.S. sales rights to Presidente beer, the number one beer in Central America, and greatly expand Presidente's distribution in the United States. Second, ABI would acquire a ''Southern US or Mexican craft brand,'' and use it to compete against Mexican imports. Finally, ABI would license trademarks to another tropical-style beer, in a project that the responsible ABI manager described as a ''Corona killer.''

66. ABI's Bud Light Lime, launched in 2008, was also targeted at Corona (commonly served with a slice of lime), going so far as to mimic Corona's distinctive clear bottle. As one Modelo executive noted after watching a commercial for Bud Light Lime, the product was ''invading aggressively and directly the Corona territory.'' Another executive commented that the commercial itself was ''[v]ery similar'' to one Modelo, through Crown, was developing at the same time.

67. The proposed acquisition's harmful effect on product innovation is already evident. If ABI were to acquire Modelo and enter into the supply agreement with Constellation, ABI would be forbidden from launching a ''Mexican-style Beer'' in the United States. Further, ABI would no longer have the same incentives to introduce new brands to take market share from the Modelo brands.

F. Summary of Competitive Harm From ABI's Acquisition of the Remainder of Modelo

68. The significant increase in market concentration that the proposed acquisition would produce in the relevant markets, combined with the loss of head-to-head competition between ABI and Modelo, is likely to result in unilateral price increases by ABI and to facilitate coordinated pricing between ABI and remaining market participants.

VI. Absence of Countervailing Factors

69. New entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Barriers to entry and expansion within each of these harmed markets include: (i) The substantial time and expense required to build a brand reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer products in retail outlets; (iii) the difficulty of securing shelf-space in retail outlets; (iv) the time and cost of building new breweries and other facilities; and (v) the time and cost of developing a network of beer distributors and delivery routes.

70. Although ABI asserts that the acquisition would produce efficiencies, it cannot demonstrate acquisition-specific and cognizable efficiencies that would be passed-through to U.S. consumers, of sufficient size to offset the acquisition's significant anticompetitive effects.

VII. Defendants' Proffered ''Remedy'' Does Not Prevent the Anticompetitive Effect of ABI's Acquisition of Modelo

71. In light of the high market concentration, and substantial likelihood of anticompetitive effects, ABI's acquisition of the remainder of Modelo is illegal. Defendants thus evidently structured their transactions

with a purported ''remedy'' in mind: the sale of Modelo's interest in Crown to Constellation, coupled with a supply agreement that gives Constellation the right to import Modelo beer into the United States. This proposal is inadequate to remedy Defendants' violation of Section 7 of the Clayton Act.

A. Constellation Has Not Shown Modelo and Crown's Past Willingness To Resist ABI's ''Leader-Follower'' Industry Plan

72. Constellation has not shown Crown and Modelo's past willingness to thwart ABI's price leadership. While Modelo supported narrowing the gap between the prices of its brands and those of ABI premium brands, Constellation's executives have sought to follow ABI's pricing lead. In August 2011, Constellation's Managing Director wrote to Crown's CEO: ''Since ABI has already announced an October general price increase I was wondering if you are considering price increases for the Modelo portfolio? . . .. From a positioning and image perspective I believe it would be a mistake to allow the gaps to be narrowed . . . I think ABI's announcement gives you the opportunity to increase profitability without having to sacrifice significant volume.'' Similarly, in December of 2011, Constellation's CFO wrote to his counterpart at Crown that he thought price increases on the Modelo brands were viable ''if domestics [i.e. Bud and Bud Light] keep going up'' but worried that ''Modelo gets a vote as well.'' And in June of 2012, a Crown executive stated that Constellation's plan for annual price increases ''put at risk the relative success'' of the Momentum Plan.

73. Crown executives have recognized the differing incentives, as it relates to pricing, of their two owners. As one Crown executive observed in a March 2011 email, ''Modelo has a higher interest in building volume so that they can cover manufacturing costs, gain manufacturing profits and build share as the brand owners.'' Constellation, however, ''is interested primarily in the financial return on a short-term or at the most on a mid-term basis.''

74. Post-transaction, Constellation would no longer be so constrained. Even if Crown's own executives wanted to continue an aggressive pricing strategy, they would be required to answer to Crown's new sole owner—Constellation.

75. Crown executives were concerned about what would happen if Constellation gained complete control of Crown. Crown's CEO wrote to Constellation's CEO after Defendants' proposed ''remedy'' was announced: ''the Crown team [] is extremely anxious about this change in ownership. This is in no small part the result of Constellation's actions over the term of the joint venture to limit investment in the business in the areas of manpower and marketing.'' Constellation's CEO responded internally: ''[Q]uite something. I see a management issue brewing.'' In another email, Crown's CEO wrote to his employees that Constellation had been ''consistently non supportive of the business through Crown's history . . . seeking to drive profits at all costs.''

76. Crown's fears appear well-grounded. In 2010, Modelo sued Constellation for breach of fiduciary duty, after Constellation had refused to invest in marketing the Modelo brands. In its Complaint, Modelo alleged ''Constellation [] knew that [Crown] management's plan was in Crown's best interests, but they blocked it anyway in an effort to secure unwarranted benefits for Constellation.''

77. Post-acquisition, Constellation would not need to ask Modelo for permission to follow ABI's price-leadership. Instead, Constellation would be free to follow ABI's lead. Moreover, ABI and Constellation will have every incentive to act together on pricing because of the vast profits each would stand to make if beer prices were to increase.

78. The contingent supply relationship between ABI and Constellation would also facilitate joint pricing between the two companies. Post-acquisition, there would be day-to-day interaction between ABI and Constellation on matters such as volume, packaging, transportation of product, and new product innovation. ABI and Constellation would have countless opportunities that could creatively be exploited, and that no one could predict or control, to allow ABI to reward Constellation (or refrain from punishing Constellation) in exchange for Constellation raising the price of the Modelo brands. The lucrative supply agreement from which Constellation seeks to gain billions of dollars in profits itself incentivizes Constellation to keep ABI happy to avoid terminating Constellation's rights in ten years.

79. ABI and Constellation are more likely to decide on mutually profitable pricing. Unlike ABI and Modelo, which are horizontal competitors, Constellation would be a mere participant in ABI's supply chain under the proposed arrangement.

80. ABI and Modelo have sought to avoid acting together on matters of competitive significance in the relevant markets in the U.S. Accordingly, they have built in several firewalls—including ABI's exclusion from sensitive portions of Modelo board meetings concerning the sale of Modelo beer in the U.S.—to insulate ABI from Modelo's U.S. business. Post-acquisition, those firewalls would be gone.

81. The loss of Modelo also, by itself, facilitates interdependent pricing. Today, ABI would need to reach agreement with both Modelo and Constellation to ensure that pricing for the Modelo brands followed ABI's lead. After the proposed transactions, working together on price would be easier because only Constellation would need to follow or agree with ABI.

B. Constellation Will Not Be an Independent Firm Capable of Restoring Head-To-Head Competition Between ABI and Modelo

82. Even if Constellation wanted to act at odds with ABI post-transaction, it would be unlikely to do so. Constellation will own no brands or brewing or bottling assets of its own. It would be dependent on ABI for its supply. Thus, Defendants' proposed remedy puts Constellation in a considerably weaker competitive position compared to Modelo, which owns both brands and breweries.

83. ABI could terminate the contingent supply agreement at any time. And if ABI is displeased with Constellation's strategy in the United States, it might simply withhold or delay supply to punish Constellation.

84. The supply agreement may also be renegotiated at any time during the 10-year period. Thus, it provides no guaranteed protection for consumers that any of its terms will be followed if ABI is able to secure antitrust approval for this acquisition.

VIII. Violations Alleged

85. The United States incorporates the allegations of paragraphs 1 through 84 above as if set forth fully herein.

Violation of Clayton Act § 7, 15 U.S.C. 18

ABI Agreement To Acquire Remainder of Modelo

86. The proposed acquisition of the remainder of Modelo by ABI would likely substantially lessen competition—even after Defendants' proposed ''remedy''—in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The transactions would have the following anticompetitive effects, among others:

(a) Eliminating Modelo as a substantial, independent, and

competitive force in the relevant markets, creating a combined firm with reduced incentives to lower price or increase innovation or quality;

(b) Competition generally in the relevant markets would likely be substantially lessened;

(c) Prices of beer would likely increase to levels above those that would prevail absent the transaction, forcing millions of consumers in the United States to pay higher prices;

(d) Quality and innovation would likely be less than levels that would prevail absent the transaction;

(e) The acquisition would likely promote and facilitate pricing coordination in the relevant markets; and

(f) The acquisition would provide ABI with a greater incentive and ability to increase its pricing unilaterally.

IX. Request for Relief

87. The United States requests that:

(a) The proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) The Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated June 28, 2012, and the ''Transaction Agreement'' dated June 28, 2012, between Modelo, Diblo, and ABI, or from entering into or carrying out any agreement, understanding, or plan by which ABI would acquire the remaining interest in Modelo, its stock, or any of its assets;

(c) The United States be awarded costs of this action; and

(d) The United States be awarded such other relief as the Court may deem just and proper.

Dated this 31st day of January 2013.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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Appendix A

Relevant Geographic Markets and Concentration Data

Market	Combined Market Share	Post-Merger HHI	Delta HHI
Oklahoma City, OK	64	4886	1000
Salt Lake City, UT	57	3900	739
Tampa/St Petersburg, FL	56	3720	621
Houston, TX	55	3660	840
Jacksonville, FL	56	3544	531
Minneapolis/St Paul, MN	50	3525	733
Denver, CO	47	3510	486
Birmingham/Montgomery, AL	52	3408	503
Memphis, TN	52	3370	482
Las Vegas, NV	49	3332	832
Dallas/Ft Worth, TX	46	3277	643
Orlando, FL	51	3273	570
Los Angeles, CA	51	3265	1207
Phoenix/Tucson, AZ	48	3139	564
Raleigh/Greensboro, NC	50	3121	485
Miami/Ft Lauderdale, FL	48	3067	964
Hartford, CT/Springfield, MA	51	3053	663
Richmond/Norfolk, VA	48	3044	472
Chicago, IL	35	2919	542
New York, NY	43	2504	778
Atlanta, GA	41	2489	433
Sacramento, CA	40	2382	697
Boston, MA	43	2353	387
San Diego, CA	39	2242	651
Baltimore, MD/Washington, DC	36	1944	465
San Francisco/Oakland, CA	34	1822	563
United States	46	2866	566

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Anheuser-Busch InBEV SA/NV, et al., Defendants.

Civil Action No. 13–127 (RWR)

Judge Richard W. Roberts

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), Plaintiff United States of America (''United States'') files this Competitive Impact Statement relating to the proposed Final Judgment submitted on April 19, 2013, for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 28, 2012, Defendant Anheuser-Busch InBev SA/NV (''ABI'') agreed to purchase the remaining equity interest in Defendant Grupo Modelo, S.A.B. de C.V. (''Modelo'') for approximately $20.1 billion. The United

States filed a civil antitrust Complaint against ABI and Modelo on January 31, 2013, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for beer in the United States and specifically in twenty-six local markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would likely result in higher beer prices and less innovation.

On April 19, 2013, the United States filed an Explanation of Consent Decree Procedures, which included a Stipulation and Order and a proposed Final Judgment as exhibits that are collectively designed to eliminate the anticompetitive effects that the acquisition would have otherwise caused. The proposed Final Judgment, which is explained more fully below, will accomplish the complete divestiture of Modelo's U.S. business to Modelo's current joint venture partner, Constellation Brands, Inc. (''Constellation''), or, if that transaction fails to close, to another acquirer capable of replacing the competition that Modelo currently brings to the United States market. This structural fix will maintain Modelo Brand Beers [4] as independent competitors to ABI's flagship brands in the United States and will eliminate the existing entanglements between ABI and Modelo vis-à-vis the beer market in the United States.

Specifically, under the proposed Final Judgment, ABI is required to divest and/or license to Constellation (or to an alternative purchaser if the sale to Constellation for some reason does not close) certain tangible and intangible assets (hereafter the ''Divestiture Assets''), including:

- A perpetual and exclusive United States license to Corona Extra, this country's best-selling imported beer and #5 brand overall, and to nine other Modelo Brand Beers including Corona Light, Modelo Especial, Negra Modelo, and Pacifico;
- Modelo's newest, most technologically advanced brewery (the ''Piedras Negras Brewery''), which is located in Mexico near the Texas border, and the assets and companies associated with it;[5]
- Modelo's limited liability membership interest in Crown Imports, LLC (''Crown''), the joint venture established by Modelo and Constellation to import, market, and sell certain Modelo beers into the United States; and
- Other assets, rights, and interests necessary to ensure that Constellation (or an alternative purchaser) is able to compete in the beer market in the United States using the Modelo Brand Beers, independent of a relationship with ABI and Modelo.

Under the terms of the Stipulation and Order, Constellation will be added as a Defendant for purposes of settlement,[6] and ABI, Modelo, and Constellation will take certain steps to operate Crown, the Piedras Negras Brewery, and the other Divestiture Assets as competitively independent, economically viable, and ongoing assets whose commercial activities will remain uninfluenced by ABI until the sale to Constellation has closed.

In order to guarantee that the acquirer of the Divestiture Assets will be able to supply Modelo Brand Beer to the United States market independent of ABI, the proposed Final Judgment contains provisions designed to ensure that Constellation (or an alternative acquirer) will have sufficient brewing capacity to meet current and future demand for Modelo Brand Beer in the United States. Because the Piedras Negras Brewery currently produces enough Modelo Brand Beer to serve only approximately 60% of present U.S. demand, Constellation has committed to build out and expand the Piedras Negras Brewery to brew and package sufficient quantities of Corona, Modelo Especial, and other Modelo Brand Beer to meet the large and growing demand for these beers in the United States. This expansion is included as a direct requirement under the proposed Final Judgment and will assure Constellation's future independence as a self-supplied brewer and seller in the United States beer market.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI brews and markets more beer sold in the United States than any other firm, with a 39% market share nationally. ABI owns and operates 125 breweries worldwide, including 12 in the United States. It owns more than 200 different beer brands, including Bud Light, the highest selling brand in the United States, and other popular brands such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Goose Island, and Beck's.

Modelo is a corporation organized and existing under the laws of Mexico, with headquarters in Mexico City, Mexico. Modelo is the third-largest brewer of beer sold in the United States, with a 7% market share nationally. Modelo owns the top-selling beer imported into the United States, Corona Extra. Its other popular brands sold in the United States include Corona Light, Modelo Especial, Negra Modelo, Victoria, and Pacifico. Crown, the joint venture established by Modelo and Constellation, imports, markets, and sells certain Modelo's brands into the United States.

Constellation, headquartered in Victor, New York, is a beer, wine, and spirits company with a portfolio of more than 100 products, including Robert Mondavi, Clos du Bois, Ruffino, and SVEDKA Vodka. It produces wine and distilled spirits, with more than forty facilities worldwide. Constellation is not currently a beer brewer; Constellation's only involvement in the beer market in the United States is through its interest in Crown, although it actively participates in the management of that joint venture. Constellation is a Defendant to this action for the purpose of assuring the satisfaction of the objectives of the proposed Final Judgment, including the expansion of the Piedras Negras Brewery.

ABI currently holds a 35.3% direct interest in Modelo, and a 23.3% direct interest in Modelo's operating subsidiary Diblo S.A. de C.V (''Diblo''). ABI's current stake in Modelo gives ABI certain minority voting rights and the right to appoint nine members of Modelo's 19-member Board of Directors.[7]

[4] Capitalized terms in this Competitive Impact Statement are defined in the proposed Final Judgment.

[5] The Piedras Negras Brewery is owned by a subsidiary of Modelo—Compañia Cervecera de Coahuila S.A. de C.V., which will be transferred as part of the divestiture.

[6] As discussed further below and in Section III.B herein, Constellation will be joined as a settling Defendant because it will be required, as a condition of acquiring the Divestiture Assets, to complete an expansion of the Piedras Negras Brewery to serve current and future United States demand.

[7] The sale of the Divestiture Assets to Constellation (or another acquirer) will eliminate

Continued

On June 28, 2012, ABI agreed to purchase, through an Agreement and Plan of Merger, along with a Transaction Agreement between ABI, Modelo and Diblo, the remaining equity interest from Modelo's owners, thereby obtaining full ownership and control of Modelo, for approximately $20.1 billion.

At the time, Defendants also proposed to sell Modelo's stake in Crown to Constellation and enter into a ten-year supply agreement to provide Modelo beer to Constellation to import into the United States. The United States rejected this proposed vertical ''fix'' to a horizontal merger as inadequate to address the likely harm to competition that would result from the proposed transaction. Most importantly, the proposed supply agreement would not have alleviated the potential harm to competition that the proposed transaction created: It did not create an independent, fully-integrated brewer with permanent control of Modelo Brand Beer in the United States. The United States therefore filed a Complaint to enjoin this proposed acquisition on January 31, 2013.

B. The Competitive Effects of the Transaction on the Market for Beer in the United States

1. Relevant Markets

Beer is a relevant product market under Section 7. Wine, distilled liquor, and other alcoholic or non-alcoholic beverages do not substantially constrain the prices of beer, and a hypothetical monopolist in the beer market could profitably raise prices. ABI and other brewers generally categorize beers internally into different tiers based primarily on price, including sub-premium, premium, premium plus, and high-end. However, beers in different categories compete with each other, particularly when in adjacent tiers. For example, Modelo's Corona Extra—usually considered a high-end beer—regularly targets ABI's Bud Light, a premium light beer, as its primary competitor.

Both national and local geographic markets exist in this industry. The proposed merger would likely result in increased prices for beer in the United States market as a whole and in at least 26 Metropolitan Statistical Areas (''MSAs''). Large beer companies make competitive decisions and develop strategies regarding product development, marketing, and brand-building on a national level. Further, large beer brewers typically create and implement national pricing strategies.

However, beer brewers make many pricing and promotional decisions at the local level, reflecting local brand preferences, demographics, and other factors, which can vary significantly from one local market to another. The 26 MSAs alleged in the Complaint are areas in which beer purchasers are particularly vulnerable to targeted price increases.

2. Competitive Effects

The beer industry in the United States is highly concentrated and would become more so if ABI were allowed to acquire all of the remaining Modelo assets required to compete in the United States, as the transaction was originally proposed. ABI and MillerCoors, the two largest beer brewers in the United States, account for more than 65% of beer sold in the United States. Modelo is the third largest beer brewer, constituting approximately 7% of national sales, and in certain MSAs its market share approaches 20%. Heineken and hundreds of smaller fringe competitors comprise the remainder of the beer market. In the 26 MSAs alleged in the Complaint, ABI and Modelo control an even larger share of the market, creating a presumption under the Clayton Act that the merger of the two firms would result in harm to competition in those markets.

Even so, the market shares of ABI and Modelo understate the potential anticompetitive effect of the proposed merger. The United States determined through its investigation that large brewers engage in significant levels of tacit coordination and that coordination has reduced competition and increased prices. In most regions of the United States, major brewers implement price increases on an annual basis in the fall. ABI is usually first to announce its annual price increases, setting forth recommended wholesale price increases designed to be transparent and to encourage others to follow. MillerCoors typically announces its price increases after ABI has publicized its price increases, and largely matches ABI's price increases. As a result, although ABI and MillerCoors have highly visible competing advertising and product innovation programs, they do not substantially constrain each other's annual price increases.

The third largest brewer, Modelo, has increasingly constrained ABI's and MillerCoors's ability to raise prices. To build its market share, Modelo (through its importer Crown) has tended not to follow the announced price increases of ABI and MillerCoors. This competitive strategy narrowed the price gap between Modelo's high-end brands and ABI's and MillerCoors's premium and premium plus brands, allowing Modelo to build market share at the expense of ABI and MillerCoors. By compressing the price gap between high-end and premium brands, Modelo's actions have increasingly limited ABI's ability to lead beer prices higher. Therefore, ABI's acquisition of Modelo, as originally proposed, would have been likely to lead to higher beer prices in the United States by eliminating a competitor that resisted coordinated price increases initiated by the market share leader, ABI.

ABI and Modelo compete aggressively. Modelo brands compete with ABI brands in numerous venues and occasions, appealing to similar sets of consumers in terms of taste, quality, consumer perception, and value. As a result, Modelo (through its importer Crown) often sets its prices in particular markets with reference to the price of the leading ABI products, and engages in price competition through promotional activity designed to take share from the market leaders. Because a significant number of consumers regard the ABI brands and Modelo brands as substitutes, the merger, absent the divestiture, would create an incentive for ABI to raise the prices of some or all of the merged firm's brands and profitably recapture sales that result from consumers switching between the ABI brands and Modelo brands.

Further, competition from Modelo has spurred additional significant product innovation from ABI, including the introduction of Bud Light Lime, the introduction of new packages such as ''Azulitas,'' [8] and the expansion of Landshark Lager. The merger of the two firms, as originally proposed, would have been likely to negatively affect ABI's incentive to innovate, bring new products to market, and otherwise invest in attracting consumers away from the unique Modelo brands.

3. Entry and Expansion

Neither entry into the beer market, nor any repositioning of existing brewers, would undo the anticompetitive harm from ABI's acquisition of Modelo, as originally proposed. Modelo's brands compete well against ABI due to their brand positioning and reputation, their well-established marketing and broad acceptance by a wide range of consumers, and their robust distribution network resulting in the near-ubiquity of Corona Extra in the establishments where consumers purchase and

ABI's minority right and sharing of profits in Modelo's U.S. business.

[8] Azulitas are 8 ounce cans of Bud Light that compete directly with Modelo's ''Coronitas.''

consume beer. Any entrant would face enormous costs in attempting to replicate these assets, and would take many years to succeed. Building nationally recognized and accepted brands, which retailers will support with feature and display activity, is difficult, expensive, and time consuming. While consumers have undoubtedly benefited from the launch of many individual craft and specialty beers in the United States, the multiplicity of such brands does not replace the nature, scale, and scope of competition that Modelo provides today, and that would otherwise be eliminated by the proposed transaction.

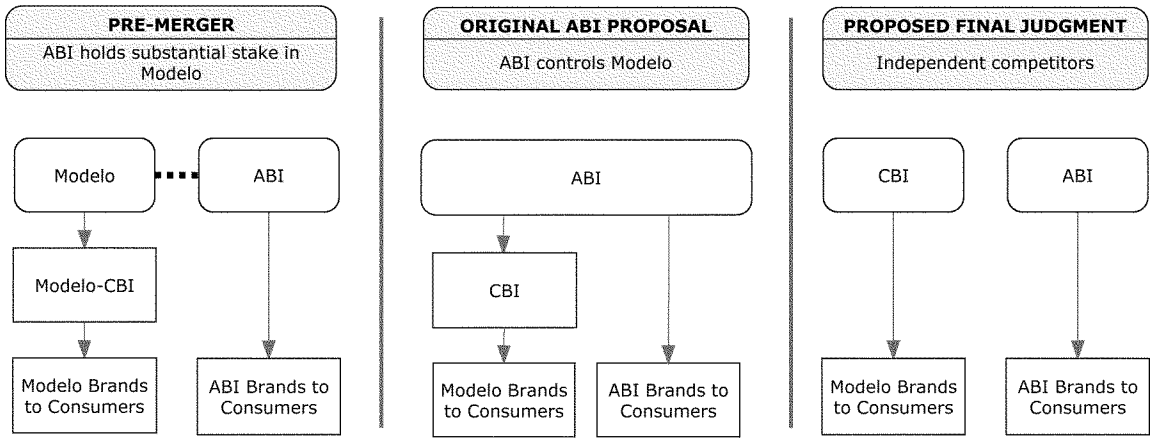
III. Explanation of the Proposed Final Judgment

The proposed Final Judgment contains a clean, structural remedy that eliminates the likely anticompetitive effects of the acquisition in the market for beer in the United States and the 26 local markets identified in the Complaint. The divestitures required by the proposed Final Judgment will create an independent and economically viable competitor that will stand in the shoes of Modelo in the United States. Specifically, the divestiture of the Piedras Negras Brewery and Modelo's interest in Crown, and the perpetual brand licenses required by the proposed Final Judgment, will vest in Constellation (or an alternative purchaser, should ABI's divestiture to Constellation not be completed) the brewing capacity, the assets, and the other rights needed to produce, market, and sell Modelo Brand Beer in a manner similar to that which we see today. In short, the divestiture preserves the current structure of the beer market in the United States by maintaining an independent brewer with an incentive to resist following ABI's price leadership in order to expand share. Furthermore, the proposed Final Judgment puts an end to the existing entanglements between ABI and Modelo with respect to the United States beer market. Finally, the proposed Final Judgment also provides for supervision by this Court and the United States of the transition services necessary to allow Constellation or another acquirer to compete effectively while the divestiture and expansion of the Piedras Negras Brewery are completed.

A. The Divestiture

The proposed Final Judgment requires ABI, within 90 days after entry of the Stipulation and Order by the Court, to (1) divest to Constellation Modelo's current interest in Crown, along with the Piedras Negras Brewery and associated assets, and (2) grant to Constellation a perpetual, assignable license to ten of the most popular Modelo Brand Beers, including Corona and Modelo Especial, for sale in the United States.[9] The rights, assets, and interests to be divested to Constellation are set forth in the transaction agreements that are attached as exhibits to the proposed Final Judgment. If the divestiture to Constellation should fail to close, ABI would be required to make those same divestitures, and grant the same licenses, to another acquirer acceptable to the United States for the purpose of enabling that alternative acquirer to brew Modelo Brand Beer, and to market and distribute them in the United States market.

The proposed Final Judgment differs significantly from the deal that ABI sought unilaterally to impose and that is described in the Complaint. It vertically integrates the production and sale of Modelo Brand Beer in the United States and eliminates ABI's control of Modelo Brand Beer in the United States, as illustrated below:



The proposed Final Judgment requires ABI to license rather than divest the brands because ABI retains the right to brew and market Modelo's brands throughout the rest of the world. The structure of the licenses provides Constellation all the rights and abilities it needs to compete in the United States as Modelo did before the merger, including the opportunity to introduce new brands in the United States that Modelo already markets in Mexico, such as León. The licenses are perpetual and assignable and cannot be terminated by ABI for any reason. They include the right to develop and launch new brand extensions and packages, to update brand recipes in response to consumer demand, and to adopt, or decline to adopt, any updated recipes for any of the licensed brands that ABI may choose to use outside the United States. This flexibility allows Constellation to adapt to changing market conditions in the United States to compete effectively in the future, and reduces ABI's ability to interfere with those adaptations.

The assets must be divested and/or licensed in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants ABI and Modelo must take all reasonable steps necessary to accomplish the divestiture

[9] The licensed brands include all the brands that Modelo currently offers (through its distributor Crown) in the United States: Corona, Corona Light, Modelo Especial, Negra Modelo, Modelo Light, Pacifico, and Victoria. The license also includes certain brands not yet offered in the United States, but that Constellation would be free to launch here: Pacifico Light, Barrilito, and León.

quickly. In the event that ABI does not accomplish the divestiture within 90 days as prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to complete the divestiture.[10]

B. Mandatory Expansion of the Piedras Negras Brewery

For the divestiture to be successful in replacing Modelo as a competitor, Constellation must expand the Piedras Negras Brewery's production capabilities. Section V.A of the proposed Final Judgment requires Constellation (or an alternative purchaser) to expand the Piedras Negras Brewery to be able to produce 20 million hectoliters of packaged beer annually by December 31, 2016. Such expansion will allow Constellation to produce, independently from ABI, enough Modelo Brand Beer to replicate Modelo's current competitive role in the United States. The required expansion also allows for expected future growth in sales of the licensed brands. In carrying out the expansion, Constellation is required to use its best efforts to adhere to specific construction milestones delineated in Sections V.A.1–8 of the proposed Final Judgment. A Monitoring Trustee will be appointed who will have the responsibility to observe the expansion and to report to the United States and the Court on whether the expansion is on track to be completed in the required timeframe.

Requiring the buyer of divested assets to improve those assets for the purposes of competing against the seller is an exceptional remedy that the United States found appropriate under the specific set of facts presented here. The recently constructed Piedras Negras Brewery is an ideal brewery for divestiture because it is near the United States border, is highly efficient, and features modular construction that was designed and equipped specifically to allow for economical expansion. No other combination of Modelo's brewing assets would have properly addressed the competitive harm caused by the proposed merger and allowed the acquirer of the Divestiture Assets to compete as effectively and economically with ABI as Modelo does today.

C. Employee Retention Provisions; Transitional Support and Supply Agreements

The proposed Final Judgment provides for or incorporates agreements protecting Constellation's ability to operate and expand the Piedras Negras Brewery while actively competing in the United States.

As part of the asset purchase, Constellation (or an alternative purchaser) will become the owner of the company that employs personnel who currently operate the Piedras Negras Brewery.[11] Section IV.D of the proposed Final Judgment prevents ABI or Modelo from interfering with Constellation's retention of those employees as part of the asset transfer. Together with the transition services, this provides Constellation with the specific knowledge necessary to operate the Piedras Negras Brewery.

Sections IV.G–I of the proposed Final Judgment require the parties to enter into transition services and interim supply agreements. The transition services agreement (Section IV.G) requires ABI to provide consulting services with respect to topics such as the management of the Piedras Negras Brewery, logistics, material resource planning, and other general administrative services that Modelo currently provides to the Piedras Negras Brewery. The transition services agreement also requires ABI to supply certain key inputs (such as aluminum cans, glass, malt, yeast, and corn starch) for a limited time. The interim supply agreement (Section IV.H–I) requires ABI to supply Constellation with sufficient Modelo Brand Beer each year to make up for any difference between the demand for such beers in the United States and the Piedras Negras Brewery's capacity to fulfill that demand.

The transition services and interim supply agreements are necessary to allow Constellation (or an alternative purchaser) to continue to compete in the United States during the time it takes to expand the Piedras Negras Brewery's capacity to brew and bottle beer, but are time-limited to assure that Constellation will become a fully independent competitor to ABI as soon as practicable. As such, in conjunction with the firewall provisions described below, they prevent the vertical supply arrangement from causing competitive harm in the near term. The proposed Final Judgment subjects these agreements, including any extensions, to monitoring by a court-appointed trustee and, in the event that a firm other than Constellation acquires the assets, the acquisition requires approval by the United States.

D. Distribution of Modelo Brand Beer

Effective distribution is important for a brewer to be competitive in the beer industry. The proposed Final Judgment imposes two requirements on ABI regarding its distribution network that are designed to limit ABI's ability to interfere with Constellation's effective distribution of Modelo Brand Beer. These requirements ensure that Constellation can reduce the threat of discrimination in distribution at the hands of ABI-owned distributors or ABI-sponsored distributor incentive programs, in recognition of the influence ABI already exercises in the concentrated beer distribution markets.

First, Section V.C of the proposed Final Judgment provides that, for ABI's majority-owned distributors (''ABI-Owned Distributors'') that distribute Modelo Brand Beer, Constellation will have a window of opportunity to terminate that distribution relationship and direct the ABI-owned distributor to sell the distribution rights to another distributor. Similarly, should ABI subsequently acquire any distributors that have contractual rights to distribute Modelo Brand Beer, Constellation may require ABI to sell those rights.

Second, the proposed Final Judgment prevents ABI for 36 months from downgrading a distributor's ranking in ABI's distributor incentive programs by virtue of the distributor's decision to carry Modelo Brand Beer. The 36-month time period tracks the initial term of the transition service and interim supply agreements, and thus allows Constellation to maintain a status quo position for the Modelo Brand Beer in ABI's distribution incentive programs until Constellation can operate independently of ABI.

E. Divestiture Trustee

In the event that Defendants do not accomplish the divestiture as prescribed in the proposed Final Judgment, either to Constellation or to an alternative buyer, Section VI of the proposed Final Judgment provides that the Court will appoint a Divestiture Trustee selected by the United States to complete the divestiture. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that ABI will pay all costs and expenses of the Divestiture Trustee. Under the proposed Final Judgment, the Divestiture Trustee shall have the ability to modify the package of assets to be divested, should such modification become necessary to enable an acquirer

[10] The proposed Final Judgment also provides that the United States may extend the time for ABI to accomplish the divestiture by up to 60 days, in its sole discretion.

[11] The company is Servicios Modelo de Coahuila, S.A. de C.V., a subsidiary of Grupo Modelo with its headquarters in Coahuila, Mexico.

to expand and operate the Piedras Negras Brewery or if there has been a breach in the representations made by ABI and Modelo regarding the completeness of the assets. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture.

F. Monitoring Trustee

Section VIII of the proposed Final Judgment permits the appointment of a Monitoring Trustee by the United States in its sole discretion and the United States intends to appoint one and seek the Court's approval. The Monitoring Trustee will ensure that Defendants expeditiously comply with all of their obligations and perform all of their responsibilities under the proposed Final Judgment and the Stipulation and Order; that the Divestiture Assets remain economically viable, competitive, and ongoing assets; and that competition in the sale of beer in the United States in the relevant markets is maintained until the required divestitures and other requirements of the proposed Final Judgment have been accomplished. The Monitoring Trustee will have the power and authority to monitor Defendants' compliance with the terms of the Final Judgment and attendant interim supply and services contracts. The Monitoring Trustee will have access to all personnel, books, records, and information necessary to monitor such compliance, and will serve at the cost and expense of ABI. The Monitoring Trustee will file reports every 90 days with the United States and the Court setting forth Defendants' efforts to comply with their obligations under the proposed Final Judgment and the Stipulation and Order.

G. Stipulation and Order Provisions

Defendants have entered into the Stipulation and Order attached as an exhibit to the Explanation of Consent Decree Procedures, which was filed simultaneously with the Court, to ensure that, pending the divestitures, the Divestiture Assets are maintained as an ongoing, economically viable, and active business. The Stipulation and Order ensures that the Divestiture Assets are preserved and maintained in a condition that allows the divestitures to be effective. The Stipulation and Order also adds Constellation as a Defendant for purposes of entering the Final Judgment.

H. Notification Provisions

Section XII of the proposed Final Judgment requires ABI to notify the United States in advance of executing certain transactions that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The transactions covered by these provisions include the acquisition or license of any interest in non-ABI brewing assets or brands, excluding acquisitions of: (1) Foreign-located assets that do not generate at least $7.5 million in annual gross revenue from beer sold for resale in the United States; (2) certain ordinary-course asset purchases and passive investments; and (3) distribution licenses that do not generate at least $3 million in annual gross revenue in the United States. This provision ensures that the United States will have the ability to take action in advance of any transactions that could potentially impact competition in the United States beer market.

I. Firewall

Section XIII of the proposed Final Judgment requires ABI and Modelo to implement firewall procedures to prevent Constellation's (or an alternative acquirer's) confidential business information from being used within ABI or Modelo for any purpose that could harm competition or provide an unfair competitive advantage to ABI based on its role as a temporary supplier to Constellation under either the transition services or interim supply agreements. Within ten days of the Court approving the Stipulation and Order described above, ABI and Modelo must submit their planned procedures for maintaining a firewall. Additionally, ABI and Modelo must brief certain officers of the company and business personnel who have responsibility for commercial interactions with Constellation as to their required treatment of Constellation's confidential business information. This provision ensures that ABI and Modelo cannot improperly use any confidential information they receive from Constellation in ways that would harm competition in the beer industry or impair Constellation's competitive prospects.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and published in the **Federal Register**.

Written comments should be submitted to: James Tierney, Chief, Networks and Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 5th Street NW., Suite 7100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, before initiating this lawsuit to enjoin the proposed merger, the Defendants' proposal of selling Modelo's stake in Crown to Constellation and entering into a ten-year supply agreement. The

United States ultimately rejected this proposal as inadequate to address the merger's likely anticompetitive effects. The settlement embodied within the proposed Final Judgment differs significantly from the Defendants' original solution. Most importantly, the proposed Final Judgment ensures that Modelo Brand Beer sold in the United States will be brewed, imported, and sold by a firm that is vertically integrated and completely independent from ABI. Unlike the Defendants' original proposal, which left Constellation with no brewing assets, beholden to ABI for the supply of beer, and was terminable after ten years, the proposed Final Judgment ensures Constellation will have independent brewing assets and the ownership of the Modelo Brand Beer for sale in the United States in perpetuity.

The United States also considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants ABI and Modelo. The United States could have continued the litigation and sought preliminary and permanent injunctions against ABI's acquisition of Modelo. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment, and concomitant expansion of the brewery assets, will preserve competition for the provision of beer in the relevant market identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[12]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[13] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the

[12] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[13] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; see also *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[14]

[14] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

VIII. Determinative Documents

The following determinative materials or documents within the meaning of the APPA were considered by the United States in formulating the proposed Final Judgment:

- The Stock Purchase Agreement attached and labeled as Exhibit A to the proposed Final Judgment;
- The Amended and Restated Membership Interest Purchase Agreement attached and labeled as Exhibit A to the proposed Final Judgment;
- The Amended and Restated Sub-License Agreement attached and labeled as Exhibit A to the Stock Purchase Agreement;
- The Transition Services Agreement attached and labeled as Exhibit B to the Stock Purchase Agreement; and
- The Interim Supply Agreement attached and labeled as Exhibit A to the Amended and Restated Membership Interest Purchase Agreement.

Dated: April 19, 2013.

Respectfully submitted,

s/Mary N. Strimel

Mary N. Strimel (D.C. Bar No. 455303),

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United States District Court For the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH InBEV SA/NV, et al., Defendants.

Civil Action No. 13–127 (RWR)

Judge Richard W. Roberts

Certificate of Service

I hereby certify that on the 19th day of April, 2013, I electronically filed the below-listed documents with the Clerk of the Court using the CM/ECF system:

1. United States' Explanation of Consent Decree Procedures Attachment A: Stipulation and Order Attachment B: Final Judgment [proposed]
2. Competitive Impact Statement
3. Motion for Leave to File Exhibits Under Seal
4. Notice of Filing Under Seal; and
5. Certificate of Service

The CM/ECF system will send a notice of electronic filing (NEF) to counsel for the Defendants:

For Defendant Anheuser Busch InBev SA/NV:

Steven C. Sunshine

Gregory Bestor Craig

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, 1440 New York Avenue NW., Washington, DC 20005–2111, Tel: (202) 371–7000, *Steven.Sunshine@skadden.com, Gregory.Craig@skadden.com*

Ian G. John

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Thomas J. Nolan

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071, Tel. (213) 687–5250, *Thomas.Nolan@skadden.com*

For Defendant Grupo Modelo S.A. de C.V.:

Richard J. Stark

Yonatan Even

CRAVATH, SWAINE & MOORE LLP, 825 Eighth Avenue, New York, NY 10019–7475, Tel: (212) 474–1000, *rstark@cravath.com, yeven@cravath.com*

The CM/ECF system will send a notice of electronic filing (NEF) to the counsel below, whom I also served with the above-listed documents via email after obtaining written consent pursuant to Fed. R. Civ. P. 5(b)(2)(E):

For Proposed Settlement Defendant Constellation Brands, Inc.,

Margaret H. Warner

Raymond A. Jacobsen, Jr.

Jon B. Dubrow

MCDERMOTT WILL & EMERY LLP, 500 North Capitol Street NW., Washington, DC 20001, Tel: (202) 756–8000, *mwarner@mwe.com, rayjacobsen@mwe.com, jdubrow@mwe.com*

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/Mary N. Strimel

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United States District Court For the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH InBEV SA/NV, et al., Defendants.

Civil Action No. 13–127 (RWR)

Judge Richard W. Roberts

Proposed Final Judgment

Whereas, Plaintiff United States of America (''United States'') filed its Complaint against Defendants Anheuser-Busch InBev SA/NV (''ABI'') and Grupo Modelo, S.A.B. de C.V. (''Modelo'') on January 31, 2013;

And whereas, pursuant to a Stipulation among Plaintiff and the Defendants including Defendant Constellation Brands, Inc., (''Constellation''), the Court has joined Constellation as a Defendant to this action for the purposes of settlement and for the entry of this Final Judgment;

And whereas, the United States and Defendants ABI, Modelo, and Constellation, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is (a) the prompt and certain divestiture of certain rights and assets held by Defendants ABI and Modelo to Defendant Constellation (or other firm) as an Acquirer, to assure that competition is not substantially lessened; and (b) the necessary and appropriate build-out and capacity expansion of the Piedras Negras Brewery by the Acquirer over time to ensure that the Acquirer is able to compete in the United States independent of a relationship to the Sellers;

And whereas, this Final Judgment requires Defendants ABI and Modelo to make certain divestitures to Defendant Constellation (or other Acquirer) for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants ABI and Modelo intend for the divestiture of certain rights and assets to Constellation (or other Acquirer) to be permanent;

And whereas, this Final Judgment requires Defendant Constellation (or other Acquirer) to make certain investments for the purpose of expanding the capacity of the Piedras Negras Brewery;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made, and Defendant Constellation has represented that the Piedras Negras Brewery investments and expansion can and will be accomplished, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants ABI and Modelo under Section 7 of the Clayton Act, as amended (15 U.S.C. 18). Pursuant to the Stipulation filed simultaneously with this Final Judgment joining Constellation as a Defendant to this action for the purpose of this Final Judgment, Constellation has consented to this Court's exercise of personal jurisdiction over it.

II. Definitions

As used in the Final Judgment:

A. ''ABI'' means Anheuser-Busch InBev SA/NV, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures (excluding Crown, and, prior to the completion of the Transaction, Modelo); and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

B. ''ABI-Owned Distributor'' means any Distributor in which ABI owns more than 50 percent of the outstanding equity interests as of the date of the divestiture of the Divestiture Assets.

C. ''Acquirer'' means:

1. Constellation; or

2. an alternative purchaser of the Divestiture Assets selected pursuant to the procedures set forth in this Final Judgment.

D. ''Acquirer Confidential Information'' means:

1. Confidential commercial information of Constellation (or other Acquirer) that has been obtained from such entity, including quantities, units, and prices of items ordered or purchased from the Sellers by the Acquirer, and any other competitively sensitive information regarding the Sellers' or the Acquirer's performance under the Interim Supply Agreement or the Transition Services Agreement; and

2. confidential unit sales data, non-public pricing strategies and plans, or any other confidential commercial information of the Acquirer that either an ABI-Owned Distributor, or any other Distributor in which ABI acquires a majority interest after the date of the divestiture contemplated herein, obtains from the Acquirer by virtue of its relationship with the Acquirer.

E. ''Beer'' means any fermented alcoholic beverage that (1) is composed in part of water, a type of starch, yeast, and a flavoring and (2) has undergone the process of brewing.

F. ''Brewery Companies'' means (1) Compañia Cervecera de Coahuila S.A. de C.V., a subsidiary of Grupo Modelo with its headquarters in Coahuila, Mexico, and (2) Servicios Modelo de Coahuila, S.A. de C.V., a subsidiary of Grupo Modelo with its headquarters in Coahuila, Mexico.

G. ''Constellation'' means Constellation Brands, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, including but not limited to, Crown, and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

H. ''Covered Entity'' means any Beer brewer, importer, or brand owner (other than ABI) that derives more than $7.5 million in annual gross revenue from Beer sold for further resale in the United States, or from license fees generated by such Beer sales.

I. ''Covered Interest'' means any non-ABI Beer brewing assets or any non-ABI Beer brand assets of, or any interest in (including any financial, security, loan, equity, intellectual property, or management interest), a Covered Entity; except that a Covered Interest shall not include (i) a Beer brewery or Beer brand located outside the United States that does not generate at least $7.5 million in annual gross revenue from Beer sold for resale in the United States; or (ii) a license to distribute a non-ABI Beer brand where said distribution license does not generate at least $3 million in annual gross revenue in the United States.

J. ''Crown'' means Crown Imports, LLC, the joint venture between Constellation and Modelo that is in the business of importing Modelo Brand Beer into the United States, or any successor thereto.

K. ''Defendants'' means ABI, Modelo, and Constellation, and any successor or assignee to all or substantially all of the business or assets of ABI, Modelo, or Constellation involved in the brewing of Beer.

L. ''Distributor'' means a wholesaler in the Territory who acts as an intermediary between a brewer or importer of Beer and a retailer of Beer.

M. ''Distributor Incentive Program'' means the Anheuser-Busch Voluntary Alignment Incentive Program and any other policy or program, either currently in effect or implemented hereafter, that offers some type of benefit to a Distributor based on the Distributor's sales performance, its loyalty in supporting any brand or brands of Beer, or its commercial support for any brand or brands of Beer, including decisions of which brands to carry or the sales volume of each.

N. ''Divestiture Assets'' means all tangible and intangible assets, rights and interests necessary to effectuate the purposes of this Final Judgment, as specified by the following agreements attached hereto and labeled as Exhibit A to this Final Judgment: The Stock Purchase Agreement (including the exhibits thereto) and the MIPA (including the exhibits thereto). In addition:

1. In the event that the Acquirer is a buyer other than Constellation, the Divestiture Assets shall also include the Entire Importer Interest, pursuant to ABI's Drag-Along Right to require Constellation to divest such interest, and subject to Constellation's right to receive compensation in the event of such divestiture, as set forth in Section 12.5 of the MIPA, attached hereto in Exhibit A; and

a. in the event that a Divestiture Trustee is appointed, the Divestiture Trustee may, with the consent of the United States pursuant to Section IV.J herein: Include in the Divestiture Assets any additional assets, including tangible assets as well as intellectual property interests and other intangible interests or assets that extend beyond the United States, if the Divestiture Trustee finds the inclusion of such assets necessary to enable the Acquirer to expand the Piedras Negras Brewery to a Nominal Capacity of at least twenty (20) million hectoliters of packaged Beer per year, or to remedy any breach that the Monitoring Trustee has identified pursuant to Section VIII.B.3 herein; or

b. remove from the divestiture package any assets that are not needed by the Acquirer to accomplish the purposes of this Final Judgment, if such removal will facilitate the divestiture of Modelo's United States Beer business as contemplated by this Final Judgment.

O. ''Drag-Along Right'' means ABI's right, as defined in Section 12.5(b) of the MIPA, attached hereto in Exhibit A, to require Constellation to divest Constellation's interest in Crown in the event Constellation is not the Acquirer.

P. ''Entire Importer Interest'' means Constellation's present interest in Crown, as defined in Section 12.5(b) of the MIPA, attached hereto in Exhibit A.

Q. ''Hold Separate Stipulation and Order'' means the Stipulation and Order filed by the parties simultaneously herewith, which imposes certain duties on the Defendants with respect to the operation of the Divestiture Assets pending the proposed divestitures, and also adds Constellation as a Defendant in this action.

R. ''Interim Supply Agreement'' means:

1. The form of agreement between Modelo and Crown, attached as Exhibit A to the MIPA, attached hereto, and incorporated herein, or

2. in the event the Divestiture Assets are sold to an Acquirer other than Constellation, an agreement between Sellers and the Acquirer to provide the same types of services under substantially similar terms as provided in Exhibit A to the MIPA incorporated hereto, subject to approval by the United States in its sole discretion.

S. ''MIPA'' means the Amended and Restated Membership Interest Purchase Agreement among Constellation Beers Ltd., Constellation Brands Beach Holdings, Inc., Constellation Brands, Inc., and Anheuser-Busch InBev SA/NV dated February 13, 2013, as amended on April 19, 2013, and attached hereto in Exhibit A.

T. ''Modelo'' means Grupo Modelo, S.A.B. de C.V., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures (excluding Crown and the entities listed on Exhibit B hereto); and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

U. ''Modelo Brand Beer'' means any Beer SKU that is part of the Divestiture Assets, and any Beer SKU that may become subject to the agreements giving effect to the divestitures required by Sections IV or VI of this Final Judgment.

V. ''Nominal Capacity'' means a brewery's annual production capacity for packaged Beer, if the brewery were operated at 100% capacity.

W. ''Piedras Negras Brewery'' means all the land and all existing structures, buildings, plants, infrastructure, equipment, fixed assets, inventory, tooling, personal property, titles, leases, office furniture, materials, supplies, and other tangible property located in Nava, Coahuila, Mexico and owned by the Brewery Companies.

X. ''Sellers'' means ABI and Modelo.

Y. ''Stock Purchase Agreement'' means the Stock Purchase Agreement between Anheuser-Busch InBev SA/NV and Constellation Brands, Inc. dated February 13, 2013, as amended on April 19, 2013, and attached hereto in Exhibit A.

Z. ''Sub-License Agreement'' means the Amended and Restated Sub-License Agreement between Marcas Modelo, S.A. de C.V. and Constellation Beers Ltd., attached as Exhibit A to the Stock Purchase Agreement.

AA. ''Territory'' means the fifty states of the United States of America, the District of Columbia, and Guam.

BB. ''Transaction'' means ABI's proposed acquisition of the remainder of Modelo.

CC. ''Transition Services Agreement'' means:

1. The form of agreement between ABI and Constellation attached as Exhibit B to the Stock Purchase Agreement, and incorporated herein; or

2. in the event the Divestiture Assets are sold to an Acquirer other than Constellation, an agreement between Sellers and such Acquirer to provide the same types of services under substantially similar terms as provided in Exhibit B to the Stock Purchase Agreement incorporated hereto, subject to approval by the United States in its sole discretion.

III. Applicability

A. This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and VI of this Final Judgment, Sellers sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. The Court orders the divestitures set forth in this Section IV, having accepted the following representations made by the parties as of the date of filing this Final Judgment:

1. By ABI, the certain representations contained in Section 3.25 of the Stock Purchase Agreement attached in Exhibit A hereto regarding the sufficiency of the assets to be divested;

2. by ABI, the certain representations contained in Section 3.26 of the Stock Purchase Agreement attached in Exhibit A hereto regarding the absence of present knowledge of impediments to the expansion of capacity of the Piedras Negras Brewery;

3. by Modelo, the representations set forth in the Letter of Grupo Modelo, S.A.B. de C.V., dated April 17, 2013, attached hereto as Exhibit C, regarding the issues described in subparagraphs A.1 and A.2 above; and

4. by Modelo, the representations set forth in the Letter of Grupo Modelo, S.A.B. de C.V., dated April 17, 2013, attached hereto as Exhibit C, regarding the sufficiency of the assets being divested for the importation, marketing, distribution and sale of Modelo Brand Beer in the United States.

B. ABI is ordered and directed, upon the later of (1) the completion of the Transaction or (2) ninety (90) calendar days after the filing of this proposed Final Judgment, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. ABI agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

C. In the event Sellers are attempting to divest the Divestiture Assets to an Acquirer other than Constellation, in accomplishing the divestiture ordered by this Final Judgment, Sellers promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Sellers shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Sellers shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Sellers shall make available such information to the United States at the same time that such information is made available to any other person.

D. Sellers shall provide the Acquirer and the United States information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. Sellers will not interfere with any negotiations by the Acquirer to retain, employ or contract with any employee of the Brewery Companies. Interference with respect to this paragraph includes, but is not limited to, enforcement of non-compete clauses, solicitation of employment with ABI or Modelo, offers to transfer to another facility of ABI or Modelo, and offers to increase salary or other benefits apart from those offered company-wide.

E. In the event the Sellers are attempting to divest the Divestiture Assets to an Acquirer other than Constellation, Sellers shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Piedras Negras Brewery; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall, as soon as possible, but within two (2) business days after completion of the relevant event, notify the United States of: (1) The effective date of the completion of the Transaction; and (2) the effective date of the sale of the Divestiture Assets to the Acquirer.

G. Any amendment or modification of any of the agreements in Exhibit A, or any similar agreements entered with an Acquirer pursuant to Section IV.B, may only be entered into with the approval of the United States in its sole discretion. Sellers and the Acquirer shall enter into a Transition Services Agreement for a period up to three (3) years from the date of the divestiture to enable the Acquirer to compete effectively in providing Beer in the United States. Sellers shall perform all duties and provide any and all services required of Sellers under the Transition Services Agreement. Any amendments or modifications of the Transition Services Agreement may only be entered into with the approval of the United States in its sole discretion.

H. Sellers and the Acquirer shall enter into an Interim Supply Agreement for a period up to three (3) years from the execution date of the divestiture to enable the Acquirer to compete effectively in providing Beer in the United States. Sellers shall perform all duties and provide any and all services required of Sellers under the Interim Supply Agreement. Any amendments, modifications, or extensions of the Interim Supply Agreement beyond three (3) years may only be entered into with the approval of the United States in its sole discretion.

I. If the Acquirer seeks an extension of the Interim Supply Agreement, the Acquirer shall so notify the United States in writing at least four (4) months prior to the date the Interim Supply Agreement expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least three (3) months prior to the date the Interim Supply Agreement expires. The total term of the Interim Supply Agreement and any extension(s) so approved shall not exceed five (5) years.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or VI shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business, engaged in providing Beer in the United States. The divestiture shall be:

1. made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) to complete the expansion of the Piedras Negras Brewery as contemplated herein, and to compete in the business of providing Beer; and

2. accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of the agreement between an Acquirer and Sellers gives Sellers the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Required Expansion and Other Provisions Designed To Promote Competition

A. Acquirer shall accomplish the expansion of the Piedras Negras Brewery to a Nominal Capacity of at least twenty (20) million hectoliters of packaged Beer annually, to include the ability to produce commercially reasonable quantities of each Modelo Brand Beer offered by Crown for sale in the United States as of the date of filing

this proposed Final Judgment. Acquirer shall complete the above expansion by December 31, 2016. As part of the expansion of the Piedras Negras Brewery, Defendant Constellation shall use its best efforts to complete the following construction milestones by the specified deadlines:

1. Within six (6) months from the date of divestiture, the appointment of, and contracts executed with, design and engineering firms;

2. Within twelve (12) months from the date of divestiture, the completion of the design and engineering (including specifications and rated capacities) of the brewhouse, packaging hall, and warehouse;

3. Within twelve (12) months from the date of divestiture, the obtainment of all necessary permits;

4. Within twelve (12) months from the date of divestiture, the commencement of construction of the brewhouse, packaging hall, and warehouse;

5. Within twenty-four (24) months from the date of divestiture, the completion of the construction of the warehouse and completion of the installation of equipment in the warehouse;

6. Within thirty (30) months from the date of divestiture, the completion of the construction of the brewhouse and completion of the installation of equipment in the brewhouse;

7. Within thirty-six (36) months from the date of divestiture, the completion of the construction of the packaging hall and the completion of the installation of equipment in the packaging hall; and

8. Within thirty-six (36) months from the date of divestiture, Constellation determines in its discretion that it is able to obtain its supply requirements from the Piedras Negras Brewery and is no longer dependent on supply under the Interim Supply Agreement.

B. For a period of thirty-six (36) months after the date of the divestiture, (i) ABI shall not make any change to its Distributor Incentive Program that would cause any Modelo Brand Beer to count against a Distributor's level of alignment, nor implement a new Distributor Incentive Program that would have a similar effect; and (ii) additionally, any Distributor's carrying of Modelo Brand Beer shall not be considered by ABI to be an adverse factor or circumstance when determining whether or not to approve such Distributor's purchase of any other Distributor.

C. For a period of two (2) years beginning one (1) year after filing of this proposed Final Judgment, as to any ABI-Owned Distributor that has rights to distribute Modelo Brand Beer in the Territory, the Acquirer shall have the right, upon sixty (60) days notice to ABI, to direct the ABI-Owned Distributor to sell those rights to another Distributor identified by Acquirer, subject to the terms for such sales set forth in Exhibit D hereto, and incorporated herein. At least thirty (30) days before ABI acquires a majority of the equity interests in any additional Distributors after divestiture of the Divestiture Assets, and such Distributors have rights to distribute Modelo Brand Beer in the Territory, ABI shall notify the Acquirer of any such planned acquisition and the Acquirer shall have thirty (30) days from the date of such notice to provide notice to ABI that the Acquirer intends to exercise the rights outlined in Exhibit D hereto.

D. If Sellers and the Acquirer enter into any new agreement(s) with each other with respect to the brewing, packaging, production, marketing, importing, distribution, or sale of Beer in the United States or elsewhere, Sellers and the Acquirer shall notify the United States of the new agreement(s) at least sixty (60) calendar days in advance of such agreement(s) becoming effective and such agreement(s) may only be entered into with the approval of the United States in its sole discretion.

VI. Appointment of Trustee To Effect Divestiture

A. If Sellers have not divested the Divestiture Assets within the time period specified in Section IV.B, Sellers shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to divest the Divestiture Assets in a manner consistent with this Final Judgment.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section VI.E of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Sellers any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

D. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII.A.

E. The Divestiture Trustee shall serve at the cost and expense of Sellers, pursuant to a written agreement with Sellers on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Sellers and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

G. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who,

during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the Defendants and to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement with an Acquirer other than Constellation, the Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets or, in the case of the Divestiture Trustee, any update of the information required to be provided under Section VI.G above.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section VI.D of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section VI shall not be consummated. Upon objection by Defendants under Section VI.D, a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. Monitoring Trustee

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, and shall have such powers as this Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants' compliance with this Final Judgment and the Defendants' progress toward effectuating the purposes of this Final Judgment, including but not limited to:

1. The attainment of the construction milestones by the Acquirer as set forth in Section V.A, the reasons for any failure to meet such milestones, and recommended remedies for any such failure;

2. any breach or other problem that arises under the Transition Services Agreement, Interim Supply Agreement, or other agreement between Sellers and Acquirer that may affect the accomplishment of the purposes of this Final Judgment, the reasons for such breach or problem, and recommended remedies therefor; and

3. any breach or other concern regarding the accuracy of the representations made by ABI in sections 3.25 and 3.26 of the Stock Purchase Agreement, incorporated herein, or successor agreements thereto, and by Modelo in the Letter of Grupo Modelo, S.A.B. de C.V., incorporated herein as Exhibit C, and recommended remedies therefor.

C. Subject to Section VIII.E of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of ABI, any consultants, accountants, attorneys, or other persons, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of ABI on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other persons, provide written notice of such hiring and the rate of compensation to ABI.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial

information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports every ninety (90) days, or more frequently as needed, with the United States, the Defendants and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section VI of this Final Judgment and the Transition Services Agreement and the Interim Supply Agreement have expired and all other relief has been completed as defined in Section V.A.

IX. Financing

Sellers shall not finance all or any part of any purchase made pursuant to Section IV or VI of this Final Judgment.

X. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

XI. Affidavits

A. Within twenty (20) calendar days of the filing of this proposed Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or VI, each Seller shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Sellers have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Sellers, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of this proposed Final Judgment, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions it has taken and all steps it has implemented on an ongoing basis to comply with Section X of this Final Judgment. Each Defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in its earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XII. Notification of Future Transactions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), ABI, without providing at least sixty (60) calendar days advance notification to the United States, shall not directly or indirectly acquire or license a Covered Interest in or from a Covered Entity; provided, however, that advance notification shall not be required for acquisitions of the type addressed in 16 CFR 802.1 and 802.9.

B. Any notification pursuant to Section XII.A above shall be provided to the United States in letter format, and shall identify the parties to the transaction, the assets being acquired or licensed, the value of the transaction, the seller's annual gross revenue from each brand or asset being acquired, and the identity of the current importer for any Beer being acquired that is brewed outside the United States.

C. All references to the HSR Act in this Final Judgment refer to the HSR Act as it exists at the time of the transaction or agreement and incorporate any subsequent amendments to the Act.

XIII. Firewall

A. During the term of the Transition Services Agreement and the Interim Supply Agreement, Sellers shall implement and maintain reasonable procedures to prevent Acquirer Confidential Information from being disclosed by or through Sellers to those of Sellers' affiliates who are involved in the marketing, distribution, or sale of Beer in the United States, or to any other person who does not have a need to know the information.

B. Sellers shall, within ten (10) business days of the entry of the Hold Separate Stipulation and Order, submit to the United States a document setting forth in detail the procedures implemented to effect compliance with Section XIII.A of this Final Judgment. The United States shall notify Sellers within five (5) business days whether it approves of or rejects Sellers' compliance plan, in its sole discretion. In the event that Sellers' compliance plan is rejected, the reasons for the rejection shall be provided to Sellers and Sellers shall be given the opportunity to submit, within ten (10) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan, the United States shall have the right to request that the Court rule on whether Sellers' proposed compliance plan is reasonable.

C. Defendants may at any time submit to the United States evidence relating to the actual operation of the firewall in support of a request to modify the firewall set forth in this Section XIII. In determining whether it would be appropriate for the United States to consent to modify the firewall, the United States, in its sole discretion, shall consider the need to protect Acquirer Confidential Information and the impact the firewall has had on Sellers' ability to efficiently provide services, supplies and products under the Transition Services Agreement and the Interim Supply Agreement.

D. Sellers and the Acquirer shall:

1. furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty (60) days of entry of the Final Judgment to (a) each officer, director, and any other employee that will receive Acquirer Confidential Information; (b) each officer, director, and any other employee that is involved in (i) any contact with the other companies that are parties to the Transition Services Agreement and Interim Supply Agreement, (ii) making decisions under the Transition Services Agreement or the Interim Supply Agreement, (iii) making decisions regarding ABI's Distributor Incentive Programs, or (iv) making decisions regarding the treatment of Crown by either ABI-Owned Distributors, or by any other Distributor in which ABI acquires a

majority interest after the date of the divestiture contemplated herein; and (c) any successor to a person designated in Section XIII.D.1(a) or (b);

2. annually brief each person designated in Section XIII.D.1 on the meaning and requirements of this Final Judgment and the antitrust laws; and

3. obtain from each person designated in Section XIII.D.1, within sixty (60) days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the company; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against each Defendant and/or any person who violates this Final Judgment.

XIV. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division (''Antitrust Division''), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States, require Defendants to conduct, at Defendants' cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under the Protective Order, then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XV. No Reacquisition

Sellers may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XVI. Bankruptcy

The failure of any party to the Sub-License Agreement to perform any remaining obligations of such party under the Sub-License Agreement shall not excuse performance by the other party of its obligations thereunder. Accordingly, for purposes of Section 365(n) of the Bankruptcy Reform Act of 1978, as amended, and codified as 11 U.S.C. 101 *et seq.* (the ''Bankruptcy Code'') or any analogous provision under any law of any foreign or domestic, federal, state, provincial, local, municipal or other governmental jurisdiction relating to bankruptcy, insolvency or reorganization (''Foreign Bankruptcy Law''), (a) the Sub-License Agreement will not be deemed to be an executory contract, and (b) if for any reason the Sub-License Agreement is deemed to be an executory contract, the licenses granted under the Sub-License Agreement shall be deemed to be licenses to rights in ''intellectual property'' as defined in Section 101 of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law and Constellation or any other Acquirer shall be protected in the continued enjoyment of its right under the Sub-License Agreement including, without limitation, if Constellation or another Acquirer so elects, the protection conferred upon licensees under 11 U.S.C. Section 365(n) of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law.

XVII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to ensure and enforce compliance, and to punish violations of its provisions.

XVIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIX. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

EXECUTION COPY

STOCK PURCHASE AGREEMENT

between

ANHEUSER-BUSCH INBEV SA/NV

and

CONSTELLATION BRANDS, INC.

February 13, 2013

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

THIS STOCK PURCHASE AGREEMENT (this "*Agreement*") is made and entered into as of February 13, 2013, between Anheuser-Busch InBev SA/NV, a public company organized under the laws of Belgium ("*ABI*") and Constellation Brands, Inc., a Delaware corporation ("*CBI*").

RECITALS:

WHEREAS, on June 28, 2012, ABI, and certain of its affiliated entities, Grupo Modelo, S.A.B. de C.V., a *sociedad anónima bursátil de capital variable* organized under the laws of Mexico ("*Grupo Modelo*"), Diblo S.A. de C.V., a Mexican *sociedad anónima de capital variable* ("*Diblo*"), and Dirección de Fabricas, S.A. de C.V., a Mexican *sociedad anónima de capital variable* partially owned but not controlled by Diblo ("*Dijon*"), as applicable, entered into certain transaction agreements pursuant to which (i) Diblo will be merged with and into Grupo Modelo, and simultaneously therewith or subsequently thereafter, Dijon will be merged with and into Grupo Modelo, with Grupo Modelo continuing as the surviving company of these mergers and (ii) a Subsidiary of ABI will commence a public tender offer in Mexico to purchase all the outstanding shares of capital stock of Grupo Modelo not owned directly or indirectly by ABI, in each case on the terms and subject to the conditions set forth therein (collectively, the "*GM Transaction*");

WHEREAS, GModelo Corporation, a Delaware corporation and a Subsidiary of Grupo Modelo ("*GMC*"), holds 50 percent (the "*Importer Interest*") of the limited liability company membership interests of Crown Imports LLC, a Delaware limited liability company ("*Importer*"), and, in connection with and contingent on the closing of the GM Transaction, ABI desires to cause GMC to sell the Importer Interest to Constellation Beers Ltd. a Maryland corporation, and Constellation Brands Beach Holdings, Inc., a Delaware corporation, pursuant to the terms and conditions in the Amended and Restated Membership Interest Purchase Agreement, among Constellation Beers Ltd., Constellation Brands Beach Holdings, Inc., CBI, and ABI, dated June 28, 2012 and as amended and restated as of the date hereof (such agreement, the "*MIPA*" and such sale, the "*MIPA Transaction*");

WHEREAS, as of the date hereof, Grupo Modelo and Diblo collectively own (i) all of the issued and outstanding shares of capital stock (no par value) (the "*CCC Company Shares*") of Compañia Cervecera de Coahuila, S.A. de C.V., *a sociedad anónima de capital variable* organized under the laws of Mexico (the "*CCC Company*") and (ii) all of the issued and outstanding shares of capital stock (no par value) (the "*Servicios Company Shares*" and, together with the CCC Company Shares, the "*Shares*") of Servicios Modelo de Coahuila, S.A. de C.V., *a sociedad anónima de capital variable* organized under the laws of Mexico (the "*Servicios Company*" and, together with the CCC Company, the "*Companies*" and each a "*Company*"), and, after the merger of Diblo into Grupo Modelo, Grupo Modelo and another direct or indirect Subsidiary of Grupo Modelo will collectively own all of the issued and outstanding Shares, and in connection with and contingent on the consummation of the GM Transaction and the MIPA Transaction, ABI desires to cause Grupo Modelo to sell, or cause to be sold, the Shares to the Buyer Parties, as designated by CBI, and to grant to Constellation Beers the rights described under the License Agreement, immediately following the consummation of the MIPA Transaction, all upon the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the premises and of the representations, warranties, covenants and agreements set forth in this Agreement, and subject to and on the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

ARTICLE I
PURCHASE AND SALE; CLOSING

1.1 Purchase and Sale. Upon the terms and subject to the conditions set forth in this Agreement, ABI agrees (a) to cause Grupo Modelo to sell and transfer, or cause to be sold and transferred, one of each of the CCC Company Shares and the Servicios Company Shares to one of the other Buyer Parties, as designated by CBI, and the remainder of the CCC Company Shares and the Servicios Company Shares to one of the other Buyer Parties, as designated by CBI, and CBI agrees to cause such Buyer Parties to purchase the Shares, directly or indirectly, from Grupo Modelo, free and clear of any Liens other than Share Permitted Liens and (b) to cause Marcas Modelo to grant to Constellation Beers the rights described in the License Agreement (collectively, the "*Purchase*").

1.2 Closing. Unless this Agreement shall have terminated and the transactions herein contemplated shall have been abandoned in accordance with the terms and provisions of Article VIII and except as agreed to in writing by ABI and CBI, the closing of the Purchase (the "*Closing*") shall take place on the date on which the MIPA Transaction Closing takes place and immediately following consummation of the MIPA Transaction (the "*Closing Date*"). The Closing shall take place at the offices of ABI's counsel, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York, at 10:00 a.m., New York City time on the Closing Date.

1.3 Purchase Price. Upon the terms and subject to the conditions of this Agreement, including, without limitation, the Purchase Price Adjustment described in Section 1.4 of this Agreement, at the Closing, CBI shall pay or cause to be paid to the parties set forth in Schedule 1.3 of this Agreement Two Billion Nine Hundred Million Dollars ($2,900,000,000) for the Shares and the rights described in the License Agreement (the "*Purchase Price*"), in cash, by wire transfer of immediately available funds.

1.4 Adjustment to the Purchase Price. (a) Promptly following the Closing, ABI and CBI shall engage Ernst & Young LLP, or if such firm is not willing to act in such capacity, such other internationally recognized accounting firm reasonably acceptable to ABI and CBI (the "*Initial EBITDA Accountant*") to prepare a statement (the "*Initial Statement*") calculating and setting forth EBITDA (the amount calculated and set forth on such Initial Statement, the "*Initial EBITDA Amount*"), which statement shall include a worksheet setting forth in reasonable detail how such amount was calculated. The Initial EBITDA Accountant shall prepare the Initial Statement as described herein and utilizing the definitions set forth herein. The Initial Statement shall be completed and delivered to ABI and CBI by the Initial EBITDA Accountant within ninety (90) days after the Closing Date. In connection with the foregoing, ABI and CBI shall each cooperate with the Initial EBITDA Accountant and provide all relevant books and records and other information in the possession or control of such party relating to determining the Initial EBITDA Amount as the Initial EBITDA Accountant may reasonably request. If the Initial EBITDA Accountant determines in the Initial Statement that Initial EBITDA Amount is less than $310 million, ABI shall cause a payment equal to 9.3 times the absolute value of the

difference between $310 million and the Initial EBITDA Amount, to be made to CBI within 30 days of the delivery of the Initial Statement by the Initial EBITDA Accountant (such amount, the "*Preliminary Adjustment Amount*").

(b) During the 90 days immediately following ABI's and CBI's receipt of the Initial Statement (the "*Adjustment Review Period*"), ABI and CBI and their representatives shall be permitted to review all working papers and working papers of such parties and their independent accountants, as well as those of the Initial EBITDA Accountant, relating to the preparation of the Initial Statement and the calculation of the Initial EBITDA Amount, and each party and the Initial EBITDA Accountant shall make reasonably available to the other the individuals responsible for and knowledgeable about the information used in, and the preparation or calculation of, the Initial Statement and the Initial EBITDA Amount; provided, however, that the independent accountants shall not be obligated to make any working papers available unless and until the other requesting party has signed a customary confidentiality and hold harmless agreement relating to such access to working papers in form and substance reasonably acceptable to such independent accountants.

(c) Each party shall, following the Closing through the date that the Final Statement becomes such in accordance with the last sentence of Section 1.4(f), take all actions reasonably necessary to maintain and preserve all necessary accounting books and records, policies and procedures on which the Initial Statement is based so as not to impede or delay the determination of the Initial EBITDA Amount or the Final EBITDA Amount or the Final Statement in the manner and utilizing the methods permitted by this Agreement.

(d) Each party shall notify the other in writing (each, a "*Notice of Disagreement*") prior to the expiration of the Adjustment Review Period if such party disagrees with the Initial Statement or the Initial EBITDA Amount. Each Notice of Disagreement shall set forth in reasonable detail the basis for such disagreement, the amounts involved and such party's determination of the Initial EBITDA Amount with reasonably detailed supporting documentation. If no Notice of Disagreement is received on or prior to the expiration date of the Adjustment Review Period, then the Initial Statement and the Initial EBITDA Amount set forth in the Initial Statement shall be deemed to have been accepted by both parties and shall become final and binding upon CBI and ABI in accordance with the last sentence of Section 1.4(f).

(e) If any Notice of Disagreement is received during the Adjustment Review Period, during the 30 days immediately following the Adjustment Review Period (the "*Adjustment Consultation Period*"), CBI and ABI shall seek in good faith to resolve any disagreement that they may have with respect to the matters specified in either party's Notice of Disagreement.

(f) If, at the end of the Adjustment Consultation Period, CBI and ABI have been unable to resolve all disagreements that they may have with respect to the matters specified in the Notice of Disagreement, then CBI and ABI shall submit all matters that remain in dispute with respect to the Notice of Disagreement(s) (along with a copy of the Initial Statement marked to indicate those line items that are in dispute) to Deloitte Touche Tohmatsu Limited (the "*Independent Accountant*") within 30 days. In the event that Deloitte Touche Tohmatsu Limited is not willing to act as the Independent Accountant, CBI and ABI shall cooperate in good faith to

appoint another internationally recognized accounting firm reasonably acceptable to ABI and CBI in which event "Independent Accountant" shall mean such firm. If within ten (10) days of referral of such disagreements to Deloitte Touche Tohmatsu Limited, Deloitte Touche Tohmatsu Limited declines to accept its appointment as Independent Accountant, or if ABI and CBI are unable to agree on the selection of an independent internationally recognized accounting firm that will agree to act as Independent Accountant within ten (10) days, then either ABI or CBI may request the American Arbitration Association to appoint such a firm, and such appointment shall be conclusive and binding on all of the parties hereto. Within 120 days after the submission of such matters to the Independent Accountant, or as soon as practicable thereafter, the Independent Accountant, acting as an expert and not as an arbitrator, will make a final determination, binding on CBI and ABI, on the basis of the definition of EBITDA and in accordance with this Section 1.4(f), of the appropriate amount of each of the line items in the Initial Statement as to which CBI and ABI disagree as specified in the Notice of Disagreement(s) and a determination of EBITDA based thereon and on line items in the Initial Statement not disputed by the parties. With respect to each disputed line item, such determination, if not in accordance with the position of either CBI and ABI, shall not be in excess of the higher, nor less than the lower, of the amounts advocated by CBI or ABI in the Notice of Disagreements. For the avoidance of doubt, the Independent Accountant shall not review any line items or make any determination with respect to any matter other than those matters in the Notice of Disagreements that remain in dispute (unless an adverse determination as to one line item would have a positive financial impact to the other party as a result of a corresponding change in a separate line item). The determination of EBITDA that is final and binding on CBI and ABI, as determined either through agreement of CBI and ABI (deemed or otherwise) pursuant to Section 1.4(b), (d), (e) and this Section 1.4(f) or through the determination of the Independent Accountant pursuant to this Section 1.4(f), are referred to herein as the "*Final Statement*" and the "*Final EBITDA Amount*", respectively; provided, however, that if the Final EBITDA Amount exceeds $370 million, the Final EBITDA Amount used for purposes of Section 1.4(h) below shall be $370 million.

(g) The cost of the Independent Accountant's review and determination shall be entirely borne by that party whose submission to the Independent Accountant is furthest from the determination of the Final EBITDA Amount (with any ABI submission over $370 million deemed to be a submission of $370 million solely for this purpose). For example, if CBI submits that the Final EBITDA Amount is $365 million and ABI submits that the Final EBITDA Amount is $400 million, but the Independent Accountant determines that the Final EBITDA Amount is $370 million, CBI shall bear 100% of the fees and expenses of the Independent Accountant. During the review by the Independent Accountant, CBI and ABI shall each make available to the Independent Accountant such individuals and such information, books, records and work papers, as may be reasonably required by the Independent Accountant to fulfill its obligations under Section 1.4(f); provided, however, that the independent accountants of CBI and ABI shall not be obligated to make any working papers available to the Independent Accountant unless and until the Independent Accountant has signed a customary confidentiality and hold harmless agreement relating to such access to working papers in form and substance reasonably acceptable to such independent accountants.

(h) The amount equal to the product of (A) (i) the Final EBITDA Amount minus (ii) Target EBITDA Amount and (B) nine and three-tenths (9.3) is hereinafter referred to as the "*Purchase Price Adjustment*".

If the sum of the Purchase Price Adjustment and the Preliminary Adjustment Amount, if any, is a negative number, ABI shall cause payment of the absolute value of such amount by wire transfer of immediately available funds to a bank account designated in writing by CBI (such designation to be made at least three (3) days prior to the date such payment is due). If the sum of the Purchase Price Adjustment and the Preliminary Adjustment Amount, if any, is a positive number, CBI shall cause payment of such amount by wire transfer of immediately available funds to a bank account designated in writing by ABI (such designation to be made at least three (3) days prior to the date such payment is due). Any payment to be made pursuant to the prior two sentences shall be made within thirty (30) days after the Final EBITDA Amount has been determined; provided, however, that notwithstanding the foregoing, CBI shall not be required to make any payment in excess of the value of the Preliminary Adjustment Amount until the first anniversary of the Closing. Any amounts due and not paid within period required hereunder shall accrue interest at an annual rate equal to the rate of interest from time to time announced by the Bank of America as its prime rate, plus four percent (4%), calculated on the basis of the actual number of days elapsed from the end of such period to the date of payment.

1.5 Deliveries by Buyer Parties. At the Closing, CBI shall deliver or cause to be delivered to ABI the following:

(a) The Purchase Price by wire transfer of immediately available funds to an account or the accounts designated by ABI and beneficially owned by the applicable Persons described on Schedule 1.3; and

(b) Duly executed counterparts to the Ancillary Agreements.

1.6 Deliveries by ABI and the Companies. At the Closing, ABI shall deliver or cause to be delivered the following:

(a) The stock certificates representing the Shares, duly endorsed in property by each Company's shareholders to the Buyer Parties to be designated by CBI not less than two Business Days prior to the Closing Date, in form and substance acceptable to CBI;

(b) A copy of each Company's stock register entry, certified by each Company's Secretary, in form and substance acceptable to CBI, evidencing the sale of the Shares to the Buyer Parties to be designated by CBI;

(c) A copy of the documents evidencing the authority of the representative of each of the Companies' shareholders to endorse the stock certificates representing the Shares to the Buyer Parties to be designated by CBI, in form and substance acceptable to CBI;

(d) The corporate seal and minute books of each of the Companies; and

(e) Duly executed counterparts to the Ancillary Agreements.

1.7 Adjustments to Transactions. The parties hereto acknowledge that it may become necessary or advisable after the date of this Agreement to adjust or modify the structure of the various transactions described in this Agreement and, subject to Section 5.2, agree to cooperate in good faith in order to preserve the economic benefits reasonably expected to be achieved by each of the parties hereto and to consider and, to the extent mutually agreed, effectuate the adjustments or modifications reasonably requested by any other party by amending the terms of this Agreement or the Ancillary Agreements; provided that, subject to Section 5.2, no such adjustment or modification shall, in any material respect, adversely affect the rights and obligations of any party or any of its Affiliates under this Agreement or disadvantage any party or any of its Affiliates (including, for the avoidance of doubt, any disadvantage which may result from adverse Tax consequences), or reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by this Agreement; provided, further, that, subject to Section 5.2, ABI shall have the right to amend any term or provision of this Agreement or any other Ancillary Agreement with the consent of CBI, which consent shall not be unreasonably withheld or delayed (it being agreed and understood that: (a) it would be unreasonable for CBI to withhold, delay or condition its consent if any such amendment is beneficial, or not adverse in any respect, to the rights and obligations of CBI hereunder or thereunder; (b) if the economics of this Agreement or any of the other Ancillary Agreement, as applicable, are modified or supplemented to the benefit of CBI, such changes to this Agreement or such other Ancillary Agreement shall be considered as beneficial, and not adverse, to the rights and obligations of CBI, hereunder or under such other Ancillary Agreement; and (c) it would be reasonable for CBI to withhold, delay or condition its consent if any such amendment would be materially adverse to the lenders and other Persons providing the Financing). For the avoidance of doubt, if there is any conflict between the terms of this Section 1.7 and the terms of Section 5.2, the terms of Section 5.2 shall govern.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF ABI

Except as set forth in the ABI Disclosure Letter, ABI represents and warrants as of the date hereof and as of the Closing (or if specified as of a different date, on such date), as follows:

2.1 Corporate Status. ABI is a legal entity duly organized or formed, validly existing and in good standing, under the laws of its jurisdiction of organization.

2.2 Authority Relative to Agreement. ABI has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and, at the Closing, to consummate the other transactions contemplated hereby, including, but not limited to, causing the Companies' shareholders to sell the Shares to the Buyer Parties to be designated by CBI. The execution and delivery of this Agreement by ABI and the consummation by ABI of the other transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of ABI are necessary to authorize the execution and delivery of this Agreement or to consummate the other transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by ABI and, assuming the due authorization, execution and delivery by CBI, this Agreement constitutes a legal, valid and binding obligation of ABI, enforceable against it in

accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditor's rights, and to general equitable principles). As of the Closing, the transfer of the Shares, directly or indirectly, by Grupo Modelo to the Buyer Parties, as designated by CBI, shall have been duly and validly authorized by all necessary corporate action, and no other corporate proceeding on the part of ABI shall be necessary to authorize the consummation of such transfer.

2.3 No Conflicts. The execution and delivery of this Agreement by ABI, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby, will not (a) result in any violation of the Organizational Documents of ABI or (b) subject to receipt of the ABI Required Approvals, conflict with or violate any Law or Governmental Order applicable to ABI.

ARTICLE III
REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANIES

Except as set forth in the ABI Disclosure Letter, ABI represents and warrants to the Buyer Parties as of the date hereof and as of the Closing Date (or if specified as of a different date, on such date), as follows:

3.1 Corporate Status, Etc.

(a) Organization and Qualification. Each Company is a corporation or other legal entity duly organized or formed, and validly existing under the Laws of its jurisdiction of organization or formation. Each Company has the requisite corporate, partnership, limited liability company or similar power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to have such power, authority and governmental approvals (i) has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and (ii) would not reasonably be expected to prevent or materially delay consummation of the transactions contemplated hereby. Each Company is duly qualified or licensed as a foreign corporation or other legal entity to do business, and is in good standing (to the extent applicable), in each jurisdiction in which the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as (i) has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and (ii) would not reasonably be expected to prevent or materially delay the ability of ABI to consummate the transactions contemplated hereby.

(b) Organizational Documents. ABI has made available to CBI complete and correct copies of the Organizational Documents of each Company, each as in effect or adopted on the date hereof. The Organizational Documents of each Company are in full force and effect. Each Company is not in violation of any provision of its Organizational Documents, except as (i) has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and (ii) would not reasonably be expected to prevent or materially delay the ability of ABI to consummate of the transactions contemplated hereby.

3.2 Capitalization; Ownership of Shares; Foreign Investment.

(a) As of the date hereof, the authorized capital stock of the CCC Company consists of (i) 10,000 shares of Fixed Capital Series "A" capital stock, no par value, and (ii) 3,622,050,000 shares of Variable Capital Series "B" capital stock, no par value, of which 3,622,060,000 shares, which constitute the CCC Company Shares, are issued and outstanding. The CCC Company Shares constitute the only issued and outstanding shares of capital stock of the CCC Company, have been duly authorized and are validly issued, fully paid and non-assessable, and not subject to preemptive rights. Except as set forth above, there are no issued and outstanding securities, rights or obligations which are convertible into, exchangeable for, or exercisable to acquire any capital stock or other equity securities of the CCC Company. At Closing, foreign investment will exceed 49% of the capital of each Company, and thus no authorization from the Mexican National Commission on Foreign Investment is necessary for the sale of the Shares as set forth in this Agreement.

(b) As of the date hereof, the authorized capital stock of the Servicios Company consists of (i) 50,000 shares of Fixed Capital Series "A" capital stock, no par value, and (ii) 4,100,000 shares of Variable Capital Series "B" capital stock, no par value, of which 4,150,000 shares, which constitute the Servicios Company Shares, are issued and outstanding. The Servicios Company Shares constitute the only issued and outstanding shares of capital stock of the Servicios Company, have been duly authorized and are validly issued, fully paid and non-assessable, and not subject to preemptive rights. Except as set forth above, there are no issued and outstanding securities, rights or obligations which are convertible into, exchangeable for, or exercisable to acquire any capital stock or other equity securities of the Servicios Company.

(c) The sale and delivery of the Shares as contemplated by this Agreement are not subject to any preemptive right, right of first refusal or other right or restriction. Grupo Modelo and/or one of its direct or indirect Subsidiaries has good and valid title to, all of the Shares, free and clear of any Liens (other than Share Permitted Liens). No party other than Grupo Modelo and/or one of its direct or indirect Subsidiaries has any record or beneficial interest in the Shares. Except as provided under this Agreement, no Person has any right (whether by Law, preemptive or contractual) to purchase or acquire the Shares or any portion thereof or any securities of the CCC Company or the Servicios Company.

3.3 No CCC Company or Servicios Company Subsidiaries. Neither Company has any Subsidiaries, and neither Company owns any shares of capital stock of, or any equity interest of any nature in, any other Person. Neither Company has agreed nor is obligated to make, and neither Company is bound by, any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Person.

3.4 Agreements with Respect to CCC Company Securities and Servicios Company Securities. There are no, and neither Company is bound by or subject to any, (a) preemptive or other outstanding rights, subscriptions, options, warrants, conversion, put, call, exchange or other rights, agreements, commitments, arrangements or understandings of any kind pursuant to which such Company, contingently or otherwise, is or may become obligated to offer, issue, sell, purchase, return or redeem, or cause to be offered, issued, sold, purchased, returned or redeemed, any securities of the CCC Company Securities or the Servicios Company

Securities, as applicable; (b) stockholder agreements, voting trusts, proxies or other agreements or understandings to which a Company is a party or to which a Company is bound relating to the holding, voting, sale, purchase, redemption or other acquisition of CCC Company Securities or the Servicios Company Securities, as applicable; or (c) agreements, commitments, arrangements, understandings or other obligations to declare, make or pay any dividends or distributions, whether current or accumulated, or due or payable, on any CCC Company Securities or Servicios Company Securities, as applicable. Except for this Agreement, neither Company is, nor is obligated to become, a party to any Contract for the sale of or is otherwise obligated to sell, transfer or otherwise dispose of the CCC Company Securities or the Servicios Company Securities, as applicable.

3.5 Material Contracts. ABI has made available to CBI true, correct and complete copies of all Material Contracts, together with any amendments, supplements or modifications to such Material Contracts. All Material Contracts are identified in Section 3.5 of the ABI Disclosure Letter. Each Material Contract is in full force and effect and is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. There are no defaults or violations, or written claims of defaults or violations, by the Company under any Material Contract or, to ABI's Knowledge, any other party thereunder. No Material Contract is so unusual or burdensome as in the foreseeable future would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect after the Closing Date.

3.6 No Conflict; Required Filings and Consents. (a) The consummation of the transactions contemplated by this Agreement by ABI will not, (i) conflict with or violate the Organizational Documents of each Company, (ii) assuming the consents, approvals, authorizations and waivers specified in Section 3.6(b) and the ABI Required Approvals have been received and any required waiting periods relating to the foregoing have expired, and any condition precedent to such consent, approval, authorization or waiver has been satisfied, conflict with or violate any Law applicable to the Companies or by which any property or asset of a Company is bound or affected, or (iii) result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give rise to any right of termination, amendment, acceleration or cancellation of any Material Contract or material Permit to which a Company is a party, or result in the creation of a Lien, upon any of the properties or assets of a Company, other than, in the case of clauses (ii) and (iii), any such violations, conflicts, breaches, defaults, rights or Liens that (1) have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, and (2) would not reasonably be expected to prevent or materially delay ABI's ability to consummate the transactions contemplated hereby.

(b) The consummation of the transactions contemplated by the Agreement by ABI will not, require any consent, approval, authorization, waiver or permit of, or filing with or notification to, any Governmental Authority, other than (i) the approvals set forth in Section 3.6(b) of the ABI Disclosure Letter (the "*ABI Required Approvals*"), (ii) any applicable Antitrust Laws, (iii) any applicable Laws related to alcoholic beverages, and (iv) where the failure to obtain such consents, approvals, authorizations, waivers or permits, or to make such filings or notifications, (1) has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and (2) would not reasonably be expected to

prevent or materially delay the ability of ABI to consummate the transactions contemplated hereby.

3.7 Companies Compliance with Laws.

(a) Neither Company is in conflict with, or in default or violation of, any applicable Laws, except for any such conflicts, defaults or violations that (i) have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and (ii) would not reasonably be expected to prevent or materially delay the ability of ABI to consummate the transactions contemplated hereby. Neither Company has received, at any time since December 31, 2011, any notice or other communication (whether oral or written) from any Governmental Authority or any other Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any Laws in any material respect, which failure remains uncured.

(b) Since December 31, 2011, neither Company has nor, to ABI's Knowledge, has any Person acting on behalf of a Company, directly or indirectly, made, offered or authorized any unlawful or improper payment of money or anything else of value to any government official, any government political party or official thereof, or any candidate for government political office, for the purpose of:

(i) influencing any act or decision of such government official in their official capacity, in order to assist in obtaining or retaining business, or directing business to any third party;

(ii) securing an improper advantage, including securing any license, permit, permission or avoiding or minimizing any Tax, levy, fine or penalty; or

(iii) inducing such government official or other Person to use their influence to affect or influence any act or decision of a Governmental Authority in order to assist the Company or any Person in obtaining or retaining business, or directing business to any third party.

For purposes of this provision, the term "government official" means any officer or employee of any Governmental Authority or any Person acting in an official capacity for or on behalf of any such Governmental Authority or any employee of any state owned or state controlled enterprise, or party to whom a payment is made. To the extent any payment has been made in Mexico, the unlawfulness or improperness of such payment shall be determined exclusively in regards to Mexican Law as in effect when the payment was made.

3.8 Financial Information. Section 3.8 of the ABI Disclosure Letter sets forth the unaudited balance sheet of each Company for the twelve month period ending as of December 31, 2012 and such Company's results of operations for the period then ended (collectively, the "*Financial Information*"). The Financial Information has been prepared from, and is consistent with, the books and records of the Company, and has been prepared in accordance with IFRS. The Financial Information fairly presents in all material respects the financial position and the results of operations of each Company as of the times and for the periods referred to therein,

subject only to ordinary non material audit adjustments consistent with prior years. EBITDA is equal to or greater than Three Hundred Ten Million Dollars ($310,000,000).

3.9 Absence of Certain Changes or Events. Since December 31, 2012, (i) the business of the Company has been conducted in the ordinary course of business consistent with past practice and (ii) there has not been any event, development or state of circumstances that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.10 No Undisclosed Liabilities. Since December 31, 2012, except for liabilities (whether or not accrued, contingent or otherwise) that (i) were incurred in the ordinary course of business consistent with past practice; (ii) are included in the Financial Information; or (iii) are set forth in Section 3.10 of the ABI Disclosure Letter, there are no liabilities of either Company, whether or not accrued, contingent or otherwise; provided, however, that as of the Closing in no event shall there be any liabilities of the Company for indebtedness for borrowed money.

3.11 Absence of Litigation. There is no claim, action, proceeding or investigation, pending or threatened against a Company, or any of its properties or assets, at law or in equity, and there are no Governmental Orders, before any arbitrator or Governmental Authority, in each case that (a) has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or (b) alleges a material violation of a criminal Law, in the case of clause (b), as of the date hereof. As of the date hereof, there is no claim, action, proceeding or, to the Knowledge of ABI or each Company, investigation, pending or, to the Knowledge of ABI or each Company, threatened against a Company, or any the Companies' respective properties or assets, at law or in equity, and there are no Governmental Orders, before any arbitrator or Governmental Authority, in each case as would prevent or materially delay the ability of ABI to consummate the transactions contemplated hereby.

3.12 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Companies from CBI or its Affiliates.

3.13 Affiliate Transactions. Except for agreements, arrangements or other legally binding understandings that may be terminated by a Company without penalty or premium, as of the date hereof, neither Company is a party to any agreement, arrangement or other legally binding understanding (whether oral or written) (including any purchase, sale, lease, investment, loan, service or management agreement) with any director or executive officer of such Company that is reasonably likely to result in a future payment to or from such Company.

3.14 Taxes. Except as have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) All material Tax Returns required by applicable Law to be filed with any Taxing Authority by, or on behalf of, a Company have been duly filed when due (including extensions) and such Tax Returns are true and complete in all material respects;

(b) Each Company has duly and timely paid or has duly and timely withheld and remitted to the appropriate Taxing Authority all material Taxes due and payable or required by applicable Law to be withheld and remitted or, where payment is being contested in good faith pursuant to appropriate procedures, has established an adequate reserve in accordance with either IFRS or GAAP as appropriate;

(c) There are no material Liens for Taxes upon any property or assets of a Company except for Permitted Liens; and

(d) There are no audit proceedings pending with respect to a Company in respect of any material Tax;

This Section 3.14 contains the sole and exclusive representations and warranties regarding Tax matters, liabilities or obligations or compliance with Laws relating thereto.

3.15 Plant Property. (a) Title. Except for Permitted Liens and except as would not have or reasonably be expected to have more than a *de minimis* adverse effect on the CCC Company: (i) the CCC Company has good and marketable title to the Plant Property free from any Liens, (ii) the CCC Company has all rights, privileges and easements appurtenant to such Plant Property, (iii) the Plant Property is not subject to any rights of any other Person and (iv) the Plant Property has free and unimpeded vehicular and pedestrian access to a dedicated public way via a dedicated public way or Appurtenant Easements (defined below).

(b) Permits. Section 3.15(b)(i) of the ABI Disclosure Letter contains a complete list of all material Permits, under which the CCC Company is operating the Piedras Negras Plant or the Plant Property is bound, which list of Permits also represents all such material governmental or regulatory licenses, memberships, approvals, variances, permits, consents, orders, decrees, notifications and other compliance requirements that are necessary for the operation of the Plant Property as conducted as of the date of this Agreement and as will be conducted on the Closing Date and, to the Knowledge of ABI, as necessary to implement and effect the Future Expansion. Each Permit the CCC Company has obtained as of the date of this Agreement is valid and existing under all applicable Laws and is in full force and effect, and in final, non-appealable form. The CCC Company is not in breach of or default under, nor has any event occurred that (immediately or upon the giving of notice or the passage of time or both) would constitute a default by the CCC Company under, any of such Permits. The CCC Company has not violated or failed to hold any valid and effective material Permits required by applicable Law with respect to the Plant Property. No proceeding is pending or, the Knowledge of ABI, threatened, to revoke, modify or materially limit any Permit. The Plant Property is free from any use or occupancy restrictions, except those imposed by applicable subdivision and zoning laws, ordinances and regulations which permit the current use of the Plant Property, and from all special taxes or assessments.

(c) Plant Property Compliance with Laws. From the period beginning on December 31, 2011, the Plant Property and the CCC Company's use and operation thereof complies in all material respects with all (i) Laws applicable to the Plant Property, including, without limitation, applicable building, health, fire, safety, subdivision, zoning and other similar regulatory Laws, and (ii) insurance requirements applicable to any Piedras Negras Plant. To the

Knowledge of ABI, the CCC Company has not received, nor is there, any notice of any non-compliance with any Laws regarding the Plant Property that have not been resolved. The present use and operation of the Plant Property, and to the Knowledge of ABI, the Future Expansion, does not constitute a non-conforming use and is not subject to a variance.

(d) Eminent Domain. Neither the whole nor any portion of the Plant Property is subject to any Governmental Order to be sold nor, to ABI's Knowledge, is being condemned, expropriated or otherwise taken by any Governmental Authority with or without payment of compensation therefore nor has any such condemnation, expropriation or taking been proposed. To ABI's Knowledge, and as of the date hereof, there are no zoning or other land-use regulation proceedings, or any change in any applicable Laws, which could affect the use, operation or value of the Plant Property affected thereby in any material respect, and the CCC Company has not received written notice of any special assessment proceedings affecting the Plant Property which have not been resolved.

(e) Property and Equipment. The buildings, plants, structures located at the Plant Property and the Equipment are all owned by the CCC Company free and clear of all Liens (except Permitted Liens) and are structurally sound, are in good operating condition and repair, subject to normal wear and tear, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, personal property or Equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

(f) Utilities. All water, water rights, sewer, gas, electric, communications, telephone, irrigation and drainage facilities and all other utilities required by law or for the present use and operation of the Plant Property (the "*Utilities Facilities*") are: (i) installed to the boundary lines of the Land and the Piedras Negras Plant situated thereon, (ii) connected and operating pursuant to valid Permits, (iii) adequate to service the Plant Property and to permit compliance with all applicable Laws and the present usage, and, to the Knowledge of ABI, Future Expansion of, the Piedras Negras Plant, and (iv) connected to the Piedras Negras Plant by means of one or more public or private easements extending from the Land to one or more public streets, public rights-of way or utility facilities (such public or private easements are collectively referred to herein as "*Appurtenant Easements*") or contractual rights of access granted in writing which are valid and enforceable and not revocable or otherwise terminable and are fully paid for. Neither the Plant Property nor any of the Utilities Facilities: (A) encroaches on the property of others, or (B) relies on any facilities located on other property not subject to Appurtenant Easements or contractual rights of access which are not revocable or otherwise terminable and are fully paid for. All of the Utility Facilities not located on the Land are situated within and comply with the provisions of the Appurtenant Easements or contractual rights of access which are not revocable or otherwise terminable and are fully paid for.

(g) No Commitments. The CCC Company has not committed or obligated itself in any manner whatsoever to assign or sublease the Plant Property to any Person other than as contemplated by this Agreement. The CCC Company has not committed or obligated itself in any manner whatsoever to place any encumbrance on the Plant Property or any portion thereof except for the Permitted Liens.

(h) Mechanics' or Materialmans' Liens. The CCC Company has not caused any work or improvements to be performed upon or made to any portion of the Land for which there remains any outstanding payment obligation that could result in the imposition of any Lien on the Plant Property other than Permitted Liens.

(i) Property Taxes. All taxes and assessments relating to the Plant Property and the operation of the Piedras Negras Plant, including without limitation, real property, personal, sales and excise taxes, and excepting those taxes payable in the current year which are not yet due or delinquent (i.e. which are still payable without interest or penalty) have been paid in full or will be paid in full prior to or at the Closing Date.

3.16 Inventory. All inventory (including raw materials, work-in-process, and finished goods) of the CCC Company (collectively "*Inventory*") is of a quality and quantity usable and merchantable consistent in all material respects with the past practice and the ordinary course of business of the CCC Company other than such percentage of Inventory as is obsolete or otherwise not usable or merchantable consistent with past practice, and all finished good inventory has been manufactured in compliance with applicable Laws. The quantities of each item of Inventory are reasonable in respect of the present circumstances of the CCC Company. Except for Permitted Liens and except as would not have or reasonably be expected to have more than a *de minimis* adverse effect on the CCC Company, the CCC Company has good and marketable title to the Inventory, free and clear of any Liens of any nature whatsoever.

3.17 CCC Company Employment Matters. The CCC Company does not have any employees. The CCC Company receives services from independent contractors. Section 3.17 of the ABI Disclosure Letter contains a list of the CCC Company independent contractors providing services.

3.18 Employee Benefit Plans.

(a) Section 3.18 of the ABI Disclosure Letter sets forth a true, correct and complete list of all employee benefit plans, all fringe benefit plans, and all other bonus, incentive compensation, deferred compensation, profit sharing, stock option, stock appreciation right, stock bonus, stock purchase, employee stock ownership, savings, severance, supplemental unemployment, layoff, salary continuation, retirement, pension, health, life insurance, dental, disability, accident, group insurance, vacation, holiday, sick leave, fringe benefit (statutorily required or not) or welfare plan, and any other employee compensation or benefit plan, Contract, and any trust, escrow or other agreement related thereto with respect to the Servicios Company (collectively, the "*Employee Benefit Plans*"). The Servicios Company has not made any commitment to create any additional Employee Benefit Plans or to modify or change any existing Employee Benefit Plan in any respect prior to the Closing Date, except as may be required by any change in applicable Law. A true and complete copy of each existing Employee Benefit Plan, including any amendments thereto, has been made available to CBI.

(b) Each of the Employee Benefit Plans and their administration is currently and has at all times in the past been in compliance in both form and operation with all applicable Laws and is being and has been operated in accordance with the terms and conditions of the

applicable Employee Benefit Plan document(s). No event has occurred which will or could cause any such Employee Benefit Plan or any fiduciary of any such Employee Benefit Plan to fail to comply with such requirements and no notice has been issued by any Governmental Authority questioning or challenging such compliance.

(c) The Servicios Company does not maintain, nor has it ever maintained, or is obligated to provide benefits under or contributions to any Employee Benefit Plan which provides benefits to retirees or other terminated employees.

(d) There is no claim, action, proceeding or investigation, pending or, to the Knowledge of ABI, threatened against the Servicios Company arising from or relating to any Employee Benefit Plan, at law or in equity, and there are no Governmental Orders, before any arbitrator or Governmental Authority, in each case that (a) has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or (b) alleges a material violation of a criminal Law, in the case of clause (b), as of the date hereof. As of the date hereof, there is no claim, action, proceeding or, to the Knowledge of ABI, investigation, pending or, to the Knowledge of ABI, threatened against the Servicios Company, and there are no Governmental Orders, before any arbitrator or Governmental Authority arising from or relating to any Employee Benefit Plan, in each case as would prevent or materially delay the ability of ABI to consummate the transactions contemplated hereby.

(e) Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will result in the payment, vesting, or acceleration of any benefit under any Employee Benefit Plan.

3.19 Labor Relations Matters.. There are no existing or, to the Knowledge of ABI, threatened labor strikes or labor disputes, grievances, controversies or other labor troubles affecting the Servicios Company, and, to the Knowledge of ABI, and there are no agreements with any labor unions or collective bargaining agreements of any kind to which CCC Company or the Servicios Company are parties, there is no controversy existing, pending or, to the Knowledge of ABI, threatened with any association or union or collective bargaining representative of the employees of Servicios Company. To the Knowledge of ABI, no current or former employee of the Servicios Company has any claim against the Servicios Company on account of or for (a) overtime pay, other than overtime pay for the current payroll period, (b) wages or salary (excluding current bonus accruals and amounts accruing under pension and profit sharing plans) for any period other than the current payroll period, (c) vacation or time off, other than that earned in respect of the current fiscal year, or (d) any violation of any Law relating to employment or social security matters. No claim has been made that remains outstanding for breach of any contract of employment or for services or for severance or redundancy payments or protective awards or for compensation for unfair dismissal or for failure to comply with any Law concerning employment rights or in relation to any alleged sex or race discrimination or for any other liability accruing from the termination or variation of any contract of employment or for services, nor, to the Knowledge of ABI, is any such claim threatened. To the Knowledge of ABI, the Servicios Company in compliance with all applicable Laws respecting employment practices (including, without limitation, all Laws concerning the public health and safety or worker health and safety) and is not engaged in any unfair labor practice, and there is no (x) unfair labor practice charge or complaint against the Servicios Company, (y)

labor, health or safety investigation, study, audit, test, review or other analysis pending in relation to any of the Servicios Company's current operations, nor (z) representation petition respecting any of the Servicios Company's employees, pending before any Governmental Authority.

3.20 Employment Agreements and Compensation. All of the consultants or independent contractors of the Servicios Company are "at will" consultants or independent contractors. All of the employees of the Servicios Company have written employment agreements, as well as any consultant or independent contractor, and each of such agreements which are Material Contracts are set forth in Section 3.5 of the ABI Disclosure Letter. True, complete and accurate copies of all of the Servicios Company's employment or supervisory manuals, employment or supervisory policies and written information generally provided to employees (such as applications or notices) existing as of the date hereof have been made available to CBI. The Servicios Company has withheld all amounts required by Law or Contract to be withheld from the wages or salaries of, and other payments to, its employees and former employees and is not liable for any arrearages of wages, salaries or other payments to such employees or former employees or any Taxes for failure to comply with any of the foregoing.

3.21 Sole Business. The Servicios Company is not involved in any business or activity except for the business of supplying employees for the operation and maintenance of the Piedras Negras Plant and providing related human resources, benefits and insurance, compliance, and payroll services to the Piedras Negras Plant. The Servicios Company does not own any real property.

3.22 Environmental Compliance.

(a) The CCC Company's use, occupancy and operation of the Plant Property, comply in all material respects with all Environmental Laws.

(b) The CCC Company has not manufactured, recycled, released, discharged, or disposed of any Hazardous Materials, as defined below, on, under, in or about the Plant Property other than in material compliance with Environmental Laws. There are no Hazardous Materials below, on, under, in or about the Plant Property, the presence of which: (i) is a violation of any applicable Environmental Law, or (ii) requires reporting, investigation, monitoring and/or remediation under any applicable Environmental Law.

(c) The CCC Company (i) is not involved in any suit or administrative proceeding alleging any material violation by the CCC Company of any Environmental Law, (ii) has not received any written notice or request for information from any governmental agency or authority or other third party with respect to a material release or threatened release of any Hazardous Material either from the Plant Property or any facility or location to which the CCC Company sent Hazardous Materials for recycling, treatment, storage or disposal, and has not received notice of any material claim from any person or entity relating to property damage or to personal injuries from exposure to any Hazardous Material, and (iii) has not failed to timely file any material report required to be filed under all applicable Environmental Laws.

(d) ABI has made available to CBI true, correct and complete copies of all Environmental Reports. All such Environmental Reports are identified on Section 3.22(d) of the ABI Disclosure Letter.

3.23 Insurance. The Companies maintain customary and adequate policies of insurance (including, without limitation, general liability and all risk property) covering each Company and the Plant Property and any buildings, plants, structures, personal property and equipment used by the CCC Company in the conduct of its business at the Plant Property. All such policies are outstanding and in full force and effect. To the Knowledge of ABI, no insurance company which has issued a policy insuring such property has requested in writing the performance of any repairs, replacements, alterations or other work.

3.24 Government Commitments. The CCC Company has not entered into, nor is the Plant Property bound by, whether or not in writing, any Contracts with any Governmental Authority involving any public subsidies or similar grants that encumber the Plant Property in any material respect or which otherwise require a Company to reimburse or take any other similar action to compensate such Governmental Authority.

3.25 Sufficiency. The Shares, when taken together with the services to be provided under the Transition Services Agreement, the license granted by the License Agreement, the supply to be provided by the Interim Supply Agreement, and the assets, properties and rights held by the Companies to which the Shares relate, constitute all the assets, properties and rights necessary to carry on the business as currently conducted by the CCC Company at the Plant Property in all material respects. The Piedras Negras Plant has the functional capability to brew, bottle, package and store not less than the Current Production, of a quality that complies in all material respects with applicable Law and is as good as or better than the quality of Beer delivered to Crown Imports LLC under that certain Importer Agreement dated as of January 2, 2007, by and between Extrade II, S.A. de CV and Crown Imports LLC over the twelve (12) months prior to the Closing Date. Except for the ownership and operation of the Piedras Negras Plant, and the sale of Beer produced therefrom, the CCC Company does not engage in or otherwise own or operate any other business lines or activities.

3.26 Future Expansion. To the Knowledge of ABI, the Land is presently comprised of sufficient additional acreage and, as of the Closing Date, has the necessary water, sewer, gas, electric, communications, telephone, irrigation, drainage and wastewater facilities and all other utilities required by Law and otherwise sufficient to allow for the Future Expansion (assuming that sufficient capital expenditures shall have been made, and the necessary Permits shall have been obtained, in order to give effect to the Future Expansion). To the Knowledge of ABI, the construction and development required to implement the Future Expansion will not cause or result in any material interruption nor would it reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect on the Current Production.

3.27 No Other Representations or Warranties. Except for the representations and warranties contained in Article II and this Article III, none of ABI, the Companies or any other person on behalf of the Companies or ABI makes any express or implied representation or warranty with respect to ABI or the Companies, including with respect to any other information provided to CBI in connection with the transactions contemplated hereby.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF
CBI

CBI represents and warrants to ABI as of the date hereof and as of the Closing Date (or if specified as of a different date, on such date), as follows:

4.1 Organization and Qualification; Subsidiaries. Each Buyer Party is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation or organization and has the requisite corporate power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to have such power, authority and governmental approvals has not had and would not reasonably be expected to, individually or in the aggregate, prevent or materially delay the ability of a Buyer Party to consummate the transaction contemplated by this Agreement (a "*CBI Material Adverse Effect*"). Each Buyer Party is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction in which the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing as have not had and would not reasonably be expected to have, individually or in the aggregate, a CBI Material Adverse Effect.

4.2 CBI Organizational Documents. CBI has made available to ABI a complete and correct copy of the Organizational Documents of each Buyer Party, each as amended to date. The Organizational Documents of each Buyer Party are in full force and effect. Each Buyer Party is not in violation of any provision of the Organizational Documents of such Buyer Party, except as has not had and would not reasonably be expected to have, individually or in the aggregate, a CBI Material Adverse Effect.

4.3 Authority Relative to Agreement. Each Buyer Party has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the other transactions contemplated hereby. The execution and delivery of this Agreement by each Buyer Party and the consummation by such Buyer Party of the other transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Buyer Parties are necessary to authorize the execution and delivery of this Agreement or to consummate the other transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each Buyer Party and, assuming the due authorization, execution and delivery by ABI, this Agreement constitutes a legal, valid and binding obligation of each Buyer Party, enforceable against each Buyer Party in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditor's rights, and to general equitable principles).

4.4 No Conflict; Required Filings; Consents.

(a) The execution and delivery of this Agreement by each Buyer Party does not, and the performance of this Agreement by each Buyer Party will not, (i) conflict with or

violate the Organizational Documents of such Buyer Party, (ii) assuming the consents, approvals, authorizations and waivers specified in Section 4.4(b) have been received and any required waiting periods have expired, and any condition precedent to such consent, approval, authorization, or waiver has been satisfied, conflict with or violate any Law applicable to the Buyer Parties or by which any property or asset of a Buyer Party is bound or affected or (iii) result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give rise to others any right of termination, amendment, acceleration or cancellation of any material Contract to which a Buyer Party is a party, or result in the creation of a Lien, upon any of the properties or assets of any of the Buyer Parties, other than, in the case of clauses (ii) and (iii), any such violations, conflicts, defaults, rights or Liens that have not had and would not reasonably be expected to have, individually or in the aggregate, a CBI Material Adverse Effect.

(b) The execution and delivery of this Agreement by CBI does not, and the consummation by CBI of the transactions contemplated by this Agreement will not, require any consent, approval, authorization, waiver or permit of, or filing with or notification to, any Governmental Authority, other than (i) any applicable Antitrust Laws, (ii) any applicable Laws related to alcoholic beverages, and (iii), and except where the failure to obtain such consents, approvals, authorizations, waivers or permits, or to make such filings or notifications, (1) has not had, and would not reasonably be expected to have, individually or in the aggregate, a CBI Material Adverse Effect and (2) would not reasonably be expected to prevent or materially delay the ability of the Buyer Parties to consummate the transactions contemplated hereby.

4.5 No Additional Consents Required. No vote or other action of the holders of any class or series of capital stock of CBI is required by Law, the Organizational Documents of CBI or otherwise in order for CBI to adopt this Agreement, approve the transactions contemplated by this Agreement and consummate the transactions contemplated hereby.

4.6 Absence of Litigation. Other than the DOJ Action, as of the date hereof, there is no claim, action, proceeding or investigation, pending or threatened against CBI or its Subsidiaries, or any of their respective properties or assets at law or in equity, and there are no Governmental Orders, before any arbitrator or Governmental Authority that is reasonably likely to prevent, enjoin or materially delay the transactions contemplated by this Agreement.

4.7 Brokers. CBI has no liability to pay any brokerage, finder's commission, fee or similar compensation in connection with the transactions contemplated by this Agreement.

4.8 Available Funds. CBI acknowledges that its obligation to consummate the transactions contemplated by this Agreement is not and will not be subject to the receipt by CBI of any financing or the consummation of any other transaction other than the occurrence of the MIPA Transaction Closing. CBI has delivered to ABI a true, complete and correct copy of the executed definitive Second Amended and Restated Interim Loan Agreement, dated as of February 13, 2013, among Bank of America, N.A., JPMorgan Chase Bank N.A. and CBI (collectively, the "*Financing Commitment*"), pursuant to which, upon the terms and subject to the conditions set forth therein, the lenders party thereto have committed to lend the amounts set forth therein (the "*Financing*") for the purpose of funding the transactions contemplated by this Agreement and the MIPA Transaction. CBI has delivered to ABI true, complete and correct

copies of the fee letter and engagement letters relating to the Financing Commitment (redacted only as to the matters indicated therein). The Financing Commitment has not been amended or modified prior to the date of this Agreement, and, as of the date hereof, the respective commitments contained in the Financing Commitment have not been withdrawn, terminated or rescinded in any respect. There are no agreements, side letters or arrangements to which CBI or its Affiliates is a party relating to the Financing Commitment that could affect the availability of the Financing. The Financing Commitment constitutes the legally valid and binding obligation of CBI and, to the knowledge of CBI, the other parties thereto, enforceable in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws of general applicability relating to or affecting creditors' rights, and by general equitable principles). The Financing Commitment is in full force and effect and has not been withdrawn, rescinded or terminated or otherwise amended or modified in any respect, and no such amendment or modification is contemplated. Neither CBI nor any of its Affiliates is in breach of any of the terms or conditions set forth in the Financing Commitment, and assuming the accuracy of the representations and warranties set forth in Articles II and III and performance by ABI of its obligations under this Agreement and the MIPA, as of the date hereof, no event has occurred which, with or without notice, lapse of time or both, would reasonably be expected to constitute a breach, default or failure to satisfy any condition precedent set forth therein. As of the date hereof, no lender has notified CBI of its intention to terminate the Financing Commitment or not to provide the Financing. There are no conditions precedent or other contingencies related to the funding of the full amount of the Financing, other than as expressly set forth in the Financing Commitment. The aggregate proceeds available to be disbursed pursuant to the Financing Commitment, together with available cash on hand and availability under ABI's existing credit facilities, will be sufficient for CBI to pay the Purchase Price and all related fees and expenses on the terms contemplated hereby in accordance with the terms of this Agreement and all amounts due under the MIPA and all related fees and expense on the terms contemplated by the MIPA in accordance with the terms of the MIPA. As of the date hereof, CBI has paid in full any and all commitment or other fees required by the Financing Commitment that are due as of the date hereof. As of the date hereof, CBI has no reason to believe that CBI and any of its applicable Affiliates will be unable to satisfy on a timely basis any conditions to the funding of the full amount of the Financing, or that the Financing will not be available to CBI on the Closing Date.

4.9 Investment Intent. Each relevant Buyer Party is acquiring the Shares for its own account, for the purpose of investment only and not with a view to, or for sale in connection with, any distribution thereof in violation of applicable securities Laws.

4.10 No Reliance. CBI acknowledges and agrees that the only representations, warranties, covenants and agreements made by ABI in this Agreement are the only representations, warranties, covenants and agreements made with respect to the transactions contemplated by this Agreement and CBI has not relied upon any other representations or other information made or supplied by or on behalf of ABI or the Companies or by any Affiliate or representative of ABI or the Companies.

ARTICLE V
COVENANTS

5.1 Conduct of Business Prior to Closing; Inventory at Closing/. During the period from the date hereof through the Closing, except (i) as may be required by Law, (ii) as may be agreed to in writing by CBI, (iii) as may be expressly permitted or contemplated by this Agreement, (iv) any capitalization of a Company's intercompany debt or (v) as set forth in Section 5.1 of the ABI Disclosure Letter, ABI shall use its reasonable best efforts to (1) cause the CCC Company to maintain, (a) its inventory of raw materials, works in process, finished goods, containers, packaging materials and all other inventory of any kind or nature, wherever located, with respect to the operation of the business of the CCC Company and (b) its cash management practices, including payments of accounts payable and collections of accounts receivable, in each case, in the ordinary course of business consistent with past practice, in the case of each of (a) and (b) after taking into account ordinary seasonality in the business of the Piedras Negras Plant in relation to the anticipated date of Closing, current capacity at the Piedras Negras Plant and volume and mix of Beer then being manufactured, bottled and packaged at such Piedras Negras Plant, and all orders for products based on forecasts delivered by Crown Imports LLC under then existing contractual import obligations and (2) cause the Servicios Company to operate in the ordinary course of business consistent with past practice.

5.2 Antitrust Approval. Each of ABI and CBI shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and assist and cooperate with each other in doing, all things necessary, proper or advisable (subject to applicable Law) to consummate and make effective the transactions contemplated by this Agreement. In furtherance and not in limitation of the foregoing, each of ABI and CBI shall use its reasonable best efforts to (i) prepare and file all filings, notices, notifications, petitions, requests, statements, *folletos informativos*, registrations and updates to registrations, submissions of information, applications and other documents with Governmental Authorities necessary or advisable to consummate the transactions contemplated by this Agreement; (ii) comply promptly with any request of any Governmental Authority for additional information, documents or other materials, including, without limitation, participating in meetings with officials of such Governmental Authority during the course of its review of the transactions contemplated hereby; (iii) with respect to CBI, support ABI and Grupo Modelo in their response to requests for information from any Governmental Authority in connection with its investigation of the transactions contemplated hereby and/or the GM Transaction; and (iv) otherwise assist in facilitating antitrust approval of the transactions contemplated by this Agreement. To the extent permitted by the relevant Governmental Authority, CBI and ABI shall (a) allow CBI (including its outside counsel) and ABI (including its outside counsel) to attend and participate in all meetings, discussions and other communications with all Governmental Authorities in connection with the review of the transactions contemplated by this Agreement, (b) promptly and fully inform CBI, ABI and Grupo Modelo of any written or material oral communication received from or given to any Governmental Authority relating to the transactions contemplated herein, and provide them with copies of any such written communication, (c) permit CBI, ABI and Grupo Modelo to review in advance, to the extent practicable with reasonable time and opportunity to comment and consider in good faith the views of the others with respect thereto, any proposed submission, correspondence or other communication by CBI to any Governmental Authority relating to the transactions contemplated herein, and (d) provide reasonable prior notice to and, to the extent

practicable, consult with CBI, ABI and Grupo Modelo in advance of any meeting, material conference or material discussion with any Governmental Authority relating to the transactions contemplated herein (and allow ABI to attend and participate in such meeting, conference or discussion). If reasonably requested by ABI or Grupo Modelo, and if permitted to do so by the relevant Governmental Authority, CBI and ABI shall, upon reasonable notice, cause an informed representative to attend any one or more meetings, either by phone or in person, before a Governmental Authority in support of approval of the transactions contemplated by this Agreement. Without limiting in any respect the parties' obligations contained in this Section 5.2, in the event that the parties do not agree with respect to strategy or tactics in connection with a Governmental Authority's review of the transactions contemplated hereby, ABI's decision shall control. Each of CBI and ABI agrees to use its reasonable best efforts to propose, negotiate, commit to and effect any consent decree, settlement, remedy, undertaking, commitment, action or agreement, including any amendment or other revision to this Agreement (each, a "*Remedial Action*"), as may be required in connection with a Governmental Authority's review of the transactions contemplated hereby; provided that any such Remedial Action (1) is conditioned on the consummation of the transactions contemplated by this Agreement and (2) does not, individually or in the aggregate, have a material adverse effect on such party as measured against the business of CBI (it being agreed and understood that, the parties shall cooperate in good faith in connection with any Remedial Action to attempt to preserve the economic benefits reasonably expected to be achieved by each of the parties hereto, but shall in any event effect any such Remedial Action required pursuant to this sentence notwithstanding anything in this parenthetical). Notwithstanding anything to the contrary contained in this Section 5.2 or elsewhere in this Agreement, a party shall not have any obligation under this Agreement to take any of the following actions or commit to take any of the following actions if such party, in good faith, reasonably expects such action to have more than a *de minimis* adverse effect on the business or interests of such party: (x) to sell, dispose of or transfer or cause any of its Subsidiaries to sell, dispose of or transfer any assets; (y) to discontinue or cause any of its Subsidiaries to discontinue offering any product or service; or (z) to hold separate or cause any of its Subsidiaries to hold separate any assets or operations (either before or after the Closing Date). Notwithstanding anything to the contrary in this Agreement, the parties hereby acknowledge and agree that none of ABI or any of its Affiliates has any obligation to the Buyer Parties under this Agreement or otherwise to consummate, or seek to receive any consent required to consummate, the transactions contemplated by the GM Transaction Agreement and the Buyer Parties shall not have any rights under, and are not intended third party beneficiaries of, the GM Transaction Agreement.

5.3 Other Regulatory Matters. Except as otherwise provided in Section 5.2, the parties hereto shall proceed diligently and in good faith and shall use their reasonable best efforts to do, or cause to be done, all things necessary, proper or advisable to, as promptly as practicable, (a) obtain all Permits from, make all filings with and give all notices to Governmental Authorities, including the Alcoholic Beverage Authorities or any other Person required to consummate the transactions contemplated by this Agreement, and (b) provide such other information and communications to such Governmental Authorities or other Person as the other party or such Governmental Authorities or other Person may reasonably request.

5.4 Notification of Certain Matters. Subject to compliance with applicable Law or as required by any Governmental Authority, CBI and ABI shall notify the other promptly in

writing of, and contemporaneously shall provide the other with true and complete copies of any and all material information or documents relating to, and shall use reasonable best efforts to cure before the Closing, any event, transaction or circumstance occurring after the date of this Agreement that causes or is reasonably expected to cause a failure of any condition to the other party's obligations to consummate the transactions contemplated hereby. No notice given pursuant to this Section 5.4 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or the rights of the parties hereunder.

5.5 Access to Information.

(a) To the extent permitted by applicable Laws and subject to each party's confidentiality obligations and the preservation of the attorney-client privilege, from the date hereof until the Closing Date, each of the parties shall furnish to the other party, its counsel, financial and tax advisors, auditors and other authorized representatives such financial, tax and operating data and other information as such Persons may reasonably request and instruct the employees, counsel, financial and tax advisors, auditors and other authorized representatives of such party and its Affiliates to cooperate with such other party and its Affiliates in its investigation of the other party and its Subsidiaries and, in the case of CBI, the Companies. Any investigation pursuant to this Section 5.5 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the other party and its Affiliates and, if applicable, the Companies.

(b) Prior to the Closing, ABI shall use reasonable best efforts to provide to CBI, including by using its reasonable best efforts to cause Grupo Modelo and its subsidiaries to provide, all cooperation reasonably requested by CBI that is customary or necessary in connection with registered or Rule 144A offerings of debt securities in the United States and outside the United States in reliance on Regulation S under the Securities Act (the "*Debt Financing*"), including:

(i) using its reasonable best efforts to provide the Required Information no later than 30 days after the date of this Agreement (for purposes hereof "*Required Information*" means carve-out financial statements of CCC Company and Servicios Company on a combined basis in accordance with U.S. GAAP and as required by applicable provisions of Regulations S-X and S-K promulgated under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (including any applicable rule of the New York Stock Exchange), as of December 31, 2012 and December 31, 2011 and for each of the years ending December 31, 2012, 2011 and 2010 accompanied by an audit opinion of PWC that is not qualified as to scope),

(ii) using its reasonable best efforts to prepare and furnish to CBI as promptly as practicable all Required Information and all other available pertinent information and disclosures relating to the CCC Company and Servicios Company (including their businesses, operations, financial projections and prospects) as may be reasonably requested by CBI in connection with the preparation of offering memorandum, private

placement memorandums or prospectuses (each an "*Offering Document*") relating to the Debt Financing.

CBI shall be responsible for the costs and expenses incurred in connection with any such preparation, review and audit and shall promptly reimburse ABI or Grupo Modelo therefore.

(c) For a period of one year after the Closing Date, upon the request of CBI, ABI: (i) during ordinary business hours and upon reasonable notice, shall, or shall cause its Affiliates to, provide to CBI and its representatives reasonable access to the books, records and employees of ABI and its Affiliates pertaining to the Companies and required for CBI to revise the Financial Information, and any subsequent consolidated financial statements of the Companies in connection with the preparation of selected and summary financial data and pro forma financial information regarding the businesses of the Companies for all periods required by the applicable provisions of Regulation S-X and S-K promulgated under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and required to be prepared by CBI under such Regulations; and (ii) upon reasonable notice, ABI shall, or shall cause its Affiliates to, use their respective reasonable best efforts to cause the officers, employees, representatives, agents and advisors of ABI, or its Affiliates, as applicable, to (A) as necessary, assist with CBI's preparation of revised financial statements and disclosure therein, (B) execute such certifications and documents, based on their actual knowledge, as are customary and required of acquired businesses, are reasonably requested by CBI, and are necessary for CBI's, or any Affiliate of CBI's, compliance with applicable Law, including, without limitation, the rules and regulations promulgated by the New York Stock Exchange and the Securities and Exchange Commission applicable to the acquisition of material assets in the United States, and (C) use reasonable best efforts to facilitate cooperation of ABI's outside independent public accountants to deliver such consents and comfort as are customary under applicable accounting standards, as promptly as reasonably practicable, but in no event later than forty-five (45) days after receipt of a request by CBI therefor. CBI shall be responsible for the costs and expenses incurred in the connection with such preparation, review and audit. ABI agrees that CBI may use, and ABI shall use its reasonable best efforts to, deliver such consents and shall authorize ABI's outside independent public accountants to deliver such consents as may reasonably be requested by CBI for the use of, the financial and other information provided pursuant to this Section 5.5(b), or any other financial information provided by, or on behalf of ABI to CBI specifically for the following purposes: in any registration statement, prospectus, offering memorandum, Form 8-K or other public filing, at any time on and after the date of this Agreement. CBI waives any rights against, and fully releases and discharges, ABI from any claims for indemnification it may have or acquire solely for any breach of ABI's representations and warranties contained in Section 3.8 that result from ABI's compliance with this Section 5.5(b).

5.6 Publicity. ABI and CBI shall consult with each other prior to issuing any press releases regarding the transactions contemplated by this Agreement and any other press releases or otherwise making public announcements with respect to the transactions contemplated by this Agreement, except as may be required by Law or by obligations pursuant to any listing agreement with or rules of any applicable securities exchange.

5.7 ABI Right of First Offer. On and after the Closing Date:

(a) In the event that CBI or any Subsidiary thereof, in any tier, determines to enter into an agreement providing for, or otherwise regarding, directly or indirectly, the distribution or sale (including resale) of Non-GM Beer in Mexico, CBI shall, before entering, or allowing such Subsidiary to enter, into any such agreement, notify ABI in writing of its decision to do so. For a period of 60 days following ABI's receipt of such notice, CBI and ABI shall discuss in good faith the possibility of ABI or an Affiliate thereof serving as the exclusive distributor of such Non-GM Beer in Mexico.

(b) If, by the end of such 60-day period, the parties (or their respective Affiliates) have not entered into an agreement providing for the exclusive distribution and sale of such Non-GM Beer in Mexico by ABI or a Subsidiary thereof, in any tier, then CBI for a period of 90 days immediately following the end of such 60-day period may attempt to find another Person to distribute and sell such Non-GM Beer in Mexico on terms and conditions that are no more favorable to such other Person (taken as a whole) than the last set (if any) of terms and conditions that were offered by CBI to ABI and rejected by ABI and should CBI not find such Person within such 90 day period then CBI shall again be subject to the requirements of this Section 5.7; provided that CBI shall provide ABI sixty (60) days' advance written notice of such more favorable terms and a good faith opportunity to enter into a distribution or sale agreement on such terms.

5.8 CBI Right of First Offer. On and after the Closing Date:

(a) In the event that ABI or a Subsidiary thereof, in any tier, determines to sell the Glass Plant to any Person (other than a Subsidiary or Affiliate of ABI) other than CBI or any Subsidiary thereof, in any tier, ABI shall, before entering into any such agreement, notify CBI in writing of its decision to do so. For a period of 90 days following ABI's receipt of such notice, the parties shall discuss in good faith the possibility of CBI or an Affiliate thereof acquiring the Glass Plant.

(b) If, by the end of the 90-day period specified in Section 5.8(a), the parties (or their respective Affiliates) have not entered into an agreement providing for sale of the Glass Plant to CBI or a Subsidiary thereof, in any tier, then ABI for a period of 90 days immediately following the end of such 90-day period may attempt to find another Person to acquire the Glass Plant on terms and conditions that are no more favorable to such other Person (taken as a whole) than the last set (if any) of terms and conditions that were offered by ABI to CBI and rejected by CBI (an agreement on such terms and conditions with such other Person, a "*Third Party Sale Agreement*"); provided that ABI shall provide CBI sixty (60) days' advance written notice of such more favorable terms and a good faith opportunity to acquire the Glass Plant on such terms.

(c) If, at or prior to the end of the 90-day period specified in Section 5.8(b), ABI or a Subsidiary thereof, in any tier has entered into a Third Party Sale Agreement, the parties to such agreement shall have 90 days to consummate the sale of the Glass Plant commencing on the day on which such Third Party Sale Agreement was executed (provided that such period shall be extended for an additional 90 days if the parties to such Third Party Sale Agreement are awaiting antitrust approval for the transactions). In the event that the sale of the Glass Plant is not consummated within such period, then ABI shall then again be subject to the requirements of this Section 5.8.

5.9 Confidentiality. The terms of the Confidentiality Agreement are incorporated into this Agreement by reference and shall continue in full force and effect until the MIPA Transaction Closing, at which time the Confidentiality Agreement shall terminate in accordance with the MIPA. If, for any reason, the transactions contemplated by the MIPA are not consummated, the Confidentiality Agreement shall nonetheless continue in full force and effect in accordance with its terms.

5.10 Fulfillment of Conditions. Subject to the terms and conditions of this Agreement, the Buyer Parties and ABI shall cooperate with each other and use their respective reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things reasonably necessary or desirable on its part, and proceed diligently and in good faith to satisfy each condition to the other party's obligations contained in this Agreement in order to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, and neither ABI nor any Buyer Party shall take any action, or fail to take any action required to be taken by it hereunder, that could be reasonably expected to result in the non-fulfillment of any such condition. In furtherance and not in limitation of the foregoing, CBI and the Buyer Parties shall use their reasonable best efforts to (a) comply promptly with any request of any Governmental Authority for additional information, documents or other materials, including, without limitation, participating in meetings with officials of such Governmental Authority during the course of its review of the transactions contemplated hereby and (b) support the other parties hereto in their response to requests for information from any Governmental Authority in connection with its investigation of the transactions contemplated hereby.

5.11 Post-Closing Cooperation. Subject to compliance with applicable Law, from and after the Closing Date, the Buyer Parties and ABI agree to (a) cooperate with each other, share information and supporting materials and documents relating to ownership of the Shares; provided, however, that access to any such information, supporting materials or documents shall be determined by taking into account, among other considerations, the competitive positions of the parties; provided, further, that any such access shall (i) be under the supervision of such party's designated Representatives and (ii) be in such a manner as not to unreasonably interfere with any of the businesses or operations of such party or their respective Affiliates; provided, further, that all requests for any such access made pursuant to this Section 5.11 shall be directed to such party and its designated representatives; and (b) provide the other parties with such assistance as may reasonably be requested, at the requesting party's expense, in connection with the preparation of any Tax return, any income Tax audit or other administrative or judicial proceeding relating to the ownership of the Shares prior to or after the Closing, requests for information from Governmental Authorities relating to the transactions contemplated by this Agreement, and matters relating to unclaimed property; provided, however, that a party shall not be obligated to make any work papers available to the requesting party unless and until such requesting party has signed a customary confidentiality and hold harmless agreement relating to such access to work papers in form and substance reasonably acceptable to such party to whom such request is being made.

5.12 Tax Matters.

(a) Without the prior written consent of ABI, the Buyer Parties shall not, and shall not allow a Company or any Person on behalf of a Company to, to the extent it may affect

or relate to Grupo Modelo or any Affiliate thereof, make or change any Tax election, change any annual Tax accounting period, adopt or change any method of Tax accounting, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment, surrender any right to claim a Tax refund, offset or other reduction in Tax liability or consent to any extension or waiver of the limitations period applicable to any Tax claim or assessment.

(b) The parties shall use reasonable best efforts to facilitate the conversion of each Company to a Sociedad de Responsabilidad Limitada (S. de R.L.) organized under the laws of Mexcio.

(c) The parties shall use reasonable best efforts to facilitate the filing of an Internal Revenue Service Form 8832 electing to treat each Company as an entity disregarded from its owners for United States federal income tax purposes effective prior to the Closing Date.

(d) ABI and its Affiliates agree to indemnify, defend and hold the Buyer Parties harmless from and against and in respect of, without duplication, until ninety (90) days after the expiration of the applicable statute of limitation for any liability for Taxes imposed on or with respect to CCC Company or Servicios Company for any Pre-Closing Period and any Pre-Closing Straddle Period.

(e) Other than for any Taxes for which ABI and its Affiliates are liable pursuant to Section 5.12(d), CBI agrees to indemnify, defend and hold harmless ABI and its Affiliates from and against and in respect of, without duplication, until ninety (90) days after the expiration of the applicable statute of limitation for any liability for Taxes imposed on or with respect to CCC Company or Servicios Company for any Post-Closing Period and any Post-Closing Straddle Period.

(f) ABI and its Affiliates shall prepare, or cause to be prepared, and file, or cause to be filed, any and all Tax Returns of CCC Company and/or Servicios Company for any Pre-Closing Period which are required or permitted by applicable Law to be filed by CCC Company and/or Servicios Company.

(g) CBI and its Affiliates shall prepare and file, or cause to be prepared and filed, all Tax Returns required or permitted to be filed by, or with respect to, CCC Company and/or Servicios Company for any Straddle Period and for any Post-Closing Period and shall pay any Tax shown to be due and owing thereon; provided, however, that, if ABI and its Affiliates are required to indemnify CBI under this Section 5.12 with respect to any Taxes required to be reported on such Tax Return, at least thirty (30) calendar days prior to the Due Date of such Tax Return, CBI shall provide ABI with a copy of a substantially completed draft of each such Tax Return (including any schedules, work papers, and other documentation relevant thereto). CBI shall give ABI and its Affiliates the opportunity to review and consent to the treatment in such Tax Return of items relating to the Pre-Closing Straddle Period for which ABI and its Affiliates may be liable under this Agreement, which consent shall not be unreasonably withheld or delayed. CBI shall present to ABI a statement of the amount of Taxes for which ABI and its Affiliates are liable with respect to each Tax Return required to be filed by CBI and its Affiliates pursuant to this Section 5.12(g) at least three (3) calendar days before the Due Date of such Tax Return.

(h) CBI and its Affiliates shall prepare, or cause to be prepared, and file, or cause to be filed, on or before the Due Date all other Tax Returns of CCC Company and Servicios Company required or permitted to be filed by each such entity after the Closing Date.

(i) Any Tax refund received (it being understood that with regard to any Pre-Closing Period or any Pre-Closing Straddle Period, CBI shall, and shall cause its Affiliates and the Companies to, claim any value added tax as a refund instead of a credit) by CBI or its Affiliates, CCC Company or Servicios Company in respect of a Tax borne by ABI or its Affiliates pursuant to this Section 5.12 or otherwise shall be for the account of ABI and its Affiliates. CBI and its Affiliates shall pay, or cause to be paid, to ABI and its Affiliates the amount of any such refund or credit (together with any interest received by CBI or its Affiliates from the applicable Governmental Authority and net of any additional Taxes CBI or its Affiliates incur as a result of such refund or credit) within ten (10) calendar days after receipt or utilization thereof. Specifically with respect to value added tax, a refund shall be claimed on any Pre-Closing Period or Pre-Closing Straddle Period return. CBI and its Affiliates shall be entitled to retain from any payment required under this Section 5.12(j) any reasonable third-party fees and costs incurred by CBI in obtaining the refund or utilizing the credit to which ABI and its Affiliates are entitled.

(i) For the avoidance of doubt, all Taxes (including but not limited to value added taxes) that CCC Company or Servicios Company has the right to recover (for the normal course or business of CCC Company or Servicios Company or for any other reason) at or prior to Closing shall be for the benefit of ABI and its Affiliates. CBI and its Affiliates shall take or cause to be taken all actions, and do or cause to be done all things reasonably necessary or desirable on its part, and proceed diligently and in good faith to recovered or obtain compensation against any and all Taxes (including but not limited to value added taxes or income Taxes) for which CCC Company or Servicios Company may have the right to recover, and as promptly as possible pay any amounts so recovered, compensated to, or received by CBI, any of its Affiliates, CCC Company, or Servicios Company. The above shall include, but not be limited to, any Taxes paid by CCC Company or Servicios Company at Closing and any Taxes caused or incurred before Closing and any paid on or after Closing.

(j) Except to the extent required by applicable Law, as determined in ABI's reasonable discretion, none of CBI, any of its Affiliates, CCC Company, or Servicios Company shall amend any Tax Return in respect of CCC Company or Servicios Company for a Pre-Closing Period or Straddle Period.

(k) ABI, CBI, and each of their respective Affiliates shall, to the extent permitted by applicable Law, elect to treat the Closing Date as the last day of any taxable period of each of CCC Company and Servicios Company that would otherwise be a Straddle Period. In any case where applicable Laws do not permit the Closing Date to be treated as the last day of the taxable period, any Taxes arising out of or relating to a Straddle Period shall be apportioned between the Pre-Closing Straddle Period and the

Post-Closing Straddle Period based on an interim closing of the books as of and including the Closing Date. Notwithstanding the foregoing, however, (i) exemptions, allowances or deductions that are calculated on an annualized basis (including depreciation, amortization and depletion deductions for assets in service at the Closing Date) shall be apportioned on a daily pro rata basis and (ii) solely for purposes of determining the marginal Tax rate applicable to income during such period in a jurisdiction in which such Tax rate depends upon the level of income, annualized income shall be taken into account.

(l) Notwithstanding Section 5.12(l) and in the case of any property, ad valorem or similar Taxes determined on the basis of the value of property owned by the taxpayer, the amount of Taxes with respect to a Straddle Period attributable to (i) the Pre-Closing Straddle Period shall be deemed to be the product of the amount of such Tax for the entire Tax period and a fraction, the numerator of which is the number of days in the Tax period ending on (and including) the Closing Date and the denominator of which is the number of days in the entire Tax period and (ii) the Post-Closing Straddle Period shall be deemed to be the product of the amount of such Tax for the entire Tax period and a fraction, the numerator of which is the number of the days in the Tax period beginning on the day after the Closing Date and the denominator of which is the number of days in the entire Tax period.

(m) Notwithstanding anything to the contrary contained herein, (A) no Straddle Period Taxes shall be apportioned to the Pre-Closing Straddle Period to the extent such Taxes are the result of (i) any action taken by CBI and its Affiliates or (ii) CBI, any of its Affiliates, CCC Company, or Servicios Company failing to conduct the business of such entity in the ordinary course consistent with past practices following the Closing, and (B) no Straddle Period Taxes shall be apportioned to the Post-Closing Straddle Period to the extent such Taxes are the result of (i) any action taken by ABI and its Affiliates or (ii) ABI and any of its Affiliates failing to conduct the business of such entity in the ordinary course consistent with past practices on or before the Closing.

(n) After the date hereof, CBI and its Affiliates, CCC Company, and Servicios Company (each, a "*Recipient*" and together, the "*Recipients*"), shall notify ABI within ten (10) calendar days of receipt by a Recipient of written notice of any Tax Contest with respect to CCC Company or Servicios Company which could reasonably be expected to affect ABI and its Affiliates' obligation to indemnify the Recipients pursuant to this Agreement. If the Recipients fail to give such notice to ABI, the Recipients shall not be entitled to indemnification pursuant to this Agreement in connection with such Tax Contest only if such failure actually and materially prejudices ABI's ability to contest the asserted Tax deficiency. In addition to the foregoing, the Recipients shall promptly provide ABI copies of all written notices and other documents received from the applicable Governmental Authority.

(i) If such Tax Contest relates to any Tax for which ABI or any of its Affiliates may be liable, ABI may, at its election and expense, control the defense and settlement of such Tax Contest; provided that no settlement shall be permitted if it would adversely affect CBI without CBI's consent, which consent shall not be unreasonably withheld or delayed.

(ii) If such Tax Contest relates solely to Taxes for which neither ABI nor any of its Affiliates may be liable, CBI and its Affiliates shall, at their expense, control the defense and settlement of such Tax Contest.

(o) If as a result of a Tax Contest, either ABI and its Affiliates or CBI and its Affiliates are required to pay additional Taxes for which the other party is required to indemnify, such other party shall pay CBI or ABI (or their respective Affiliates), as appropriate, the amount of such additional Taxes not later than ten (10) calendar days before such amount is due.

(p) Tax Records and Cooperation. (A) CBI shall, and shall cause its Affiliates to, (i) retain and provide to ABI and its Affiliates, on reasonable request, access during regular business hours to any records or other information (including any books and records, workpapers, schedules, supporting entries, backups, and other documents) relating to CCC Company and/or Servicios Company with respect to any Pre-Closing Period and any Pre-Closing Straddle Period and (ii) provide to ABI and its Affiliates, on reasonable request, access during regular business hours to personnel of CBI, any of its Affiliates, CCC Company, and/or Servicios Company familiar with Tax matters relating to CCC Company and/or Servicios Company to respond to inquiries of ABI or any of its Affiliates relating to Taxes with respect to any Pre-Closing Period and any Pre-Closing Straddle Period. (B) ABI shall, and shall cause its Affiliates to (i) retain and provide to CBI and its Affiliates, on reasonable request, access during regular business hours to any records or other information (including any books and records, work papers, schedules, supporting entries, backups, and other documents relating to the CCC Company and/or the Servicios Company relating to Pre-Closing Period and any Pre-Closing Straddle Period and (ii) provide to CBI and its Affiliates, on reasonable request, access during regular business hours to personnel of ABI and/or any of its Affiliates familiar with Tax matters relating to the CCC Company and/or Servicios Company to respond to inquiries of CBI or any of its Affiliates relating to Taxes with respect to any Post-Closing Straddle Period.

(q) CBI shall promptly notify ABI of any authorized extension of the statutes of limitation of either or both of CCC Company and Servicios Company granted relating to any Pre-Closing Period or Straddle Period, but any failure to provide such notice by itself shall not affect ABI's indemnification obligations under this Section 5.12 if such failure does not prejudice ABI's or any of its Affiliates' ability to contest any Tax liability. Without limiting the generality of the foregoing, following the Closing, CBI shall retain, and shall cause each of its Affiliates, CCC Company, and Servicios Company to retain, until the applicable statutes of limitation (including any authorized extensions) have expired, copies of all Tax Returns, supporting work schedules and other records or information in its possession which may be relevant to such Tax Returns for all Pre-Closing Periods and Straddle Periods and shall not destroy or otherwise dispose of any such records without first providing ABI and its Affiliates the opportunity to review and copy same.

(r) Exclusivity of Tax Matters. Except as otherwise provided in this Section 5.12, and except with respect to Section 7.2 and Section 7.5, notwithstanding anything to the contrary in this Agreement, this Section 5.12 and not Article VII shall exclusively govern all matters related to the indemnification obligations of ABI, CBI, or any of their respective Affiliates relating to Taxes under this Agreement.

(s) Any payments made by ABI and its Affiliates to CBI and its Affiliates, or by CBI and its Affiliates to ABI and its Affiliates, shall be treated as an adjustment to the Purchase Price and allocated in the manner described on Schedule 1.3.

5.13 Termination of Intercompany Agreements. Except as set forth in Section 5.13 of the ABI Disclosure Letter, from and after the Closing, ABI and the Buyer Parties shall, and shall cause their respective Affiliates to, take such actions as may be necessary to continue in effect all Intercompany Agreements such that, following the Closing, ABI and its Affiliates, on the one hand, and the Companies, on the other hand, shall continue to be able to operate their respective businesses as conducted as of immediately prior to the Closing for a period of three (3) years on all existing terms (except such terms relating to term).

5.14 Further Assurances/ Reverse Transition Services. From and after the date hereof until eighteen (18) months following the Closing, each party hereto shall, and shall cause its Affiliates, as promptly as practicable to negotiate in good faith, execute, acknowledge and deliver any other Contracts reasonably requested (i) by the other parties hereto to obtain the benefits of the transaction reasonably expected by the parties hereto and (ii) by ABI or Grupo Modelo to obtain from the Companies, and by CBI and the Companies to obtain from ABI or Grupo Modelo, in each case, services necessary for the operation of the business (as measured as of immediately prior to the Closing and consistent with past practice of the provision of intercompany services between the Companies and Grupo Modelo and its Affiliates) of Grupo Modelo and its Affiliates other than the Companies, or the Companies, as applicable, including with respect to the items listed in Section 5.14 of the ABI Disclosure Letter.

5.15 Wrong Pocket Assets and Liabilities.

(a) If, within eighteen (18) months following the Closing, any person discovers that any right, title or interest in any asset either (x) to the extent primarily used in the business of the Companies as of the date hereof or the Closing that is not owned by a Company or (y) to the extent primarily used in the business of Grupo Modelo and its Affiliates other than the Companies as of the date hereof or the Closing (a "*Wrong Pocket Asset*") is not held by, or a corresponding liability (a "*Wrong Pocket Liability*") was not assumed by, the appropriate person (the "*Right Pocket*", and the person holding such Wrong Pocket Asset or Wrong Pocket Liability, the "*Wrong Pocket*"), except as a result of a transaction occurring after the Closing consented to by the Right Pocket or as contemplated by this Agreement:

(i) The parties to this Agreement shall cause any of their Affiliates holding such right, title or interest in a Wrong Pocket Asset to transfer as promptly as reasonably practicable such Wrong Pocket Asset to the Right Pocket for no additional consideration;

(ii) The parties to this Agreement shall cause the Wrong Pocket to hold its right, title and interest in and to the Wrong Pocket Asset in trust for the Right Pocket until such time as the transfer is completed; and

(iii) The parties to this Agreement shall cause the Right Pocket to assume from the Wrong Pocket as promptly as reasonably practicable any Wrong Pocket Liability for no additional consideration.

(b) All costs and expenses arising out of compliance with such transfers shall be allocated to the parties as though such transfers had been completed as of the Closing in accordance with this Agreement.

(c) The parties to this Agreement shall cause the Right Pocket to cooperate with the Wrong Pocket in connection with the transfers contemplated by this Section 5.15.

(d) For purposes of this Section 5.15, the Companies are the Right Pocket for all assets and liabilities used primarily in the operation of their business as of the date hereof or as of the Closing and Grupo Modelo and its Affiliates (other than the Companies) are the Right Pocket for all assets and liabilities used primarily in the operation of their business as of the date hereof and as of the Closing (it being agreed and understood that no assets or rights to be licensed to Importer pursuant to the License Agreement, or to be provided pursuant to the Interim Supply Agreement shall be deemed Wrong Pocket Assets).

(e) Promptly after the Closing, ABI shall deliver originals (or copies, to the extent there are no originals) of contracts of the Companies and other books and records (excluding email correspondence not already in hard copy) to CBI. Additionally, to the extent in the possession or control of ABI, ABI will take reasonable steps to preserve all other books and records of the Companies for five (5) years after the Closing and will deliver or provide access to CBI in accordance with Section 5.11.

5.16 Non-Solicitation of Employees.

(a) CBI shall not and shall not permit its Subsidiaries to, directly or indirectly, hire, solicit or encourage to leave the employment of ABI or any of its Affiliates any employee providing transition services under the Transition Services Agreement with whom CBI, any of its Subsidiaries or any of their Representatives come into contact with in connection with receiving such transition services; provided, however, that the foregoing provision shall not apply to employees terminated by ABI or its Affiliate or general advertisements or solicitations that are not specifically targeted at such persons; and

(b) ABI shall not and shall not permit its Subsidiaries to, directly or indirectly, hire, solicit or encourage to leave the employment of, any employee of any of the Companies; provided, however, that the foregoing provision shall not apply to employees terminated by any of the Companies or general advertisements or solicitations that are not specifically targeted at such persons.

ARTICLE VI
CONDITIONS TO CLOSING

6.1 Conditions to the Obligations of CBI and ABI.

(a) Mutual Conditions. The respective obligations of each of CBI and ABI to close the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver at or prior to the Closing of the following conditions:

(i) The occurrence of the MIPA Transaction Closing;

(ii) No preliminary, temporary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or Governmental Authority, nor any statute, rule, regulation or executive order promulgated or enacted by any Governmental Authority after the date hereof, shall be in effect that would make the consummation of the transactions contemplated hereby illegal or otherwise prevent the consummation of such transactions;

(iii) The waiting periods (and any extension thereof) applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act shall have expired or shall have been terminated; and

(iv) The issuance of a no objection letter from the Mexican Federal Competition Commission (*Comisión Federal de Competencia*) in connection with the transactions contemplated by this Agreement, or expiration of the relevant statutory period (and any extension thereof) as set forth in Sections 21.III and 21.IV of the Federal Economic Competition Law (*Ley Federal de Competencia Económica*) for the parties to be entitled to consummate the transactions contemplated by this Agreement.

(b) Buyer Party Conditions. The obligations of the Buyer Parties to close the transaction contemplated hereby also shall be subject to the satisfaction or waiver by the Buyer Parties at or prior to the Closing of the following condition:

(i) a Plant Force Majeure shall not have occurred and remained uncured.

ARTICLE VII
INDEMNITY

7.1 Survival; Effect of Materiality Qualifiers. (a) The representations and warranties in this Agreement shall survive the Closing as follows:

(i) the representations and warranties in Sections 2.1, 2.2, 2.3, 3.1(a) (with respect to the first sentence only), 3.2, 3.3, 3.4, 3.12, 4.1 (with respect to the first sentence only), 4.3 and 4.7 shall survive the Closing indefinitely;

(ii) the representations and warranties in Sections 3.15 and 3.22 shall survive the Closing and shall terminate thirty-six (36) months following the Closing Date; and

(iii) all other representations and warranties in this Agreement shall survive the Closing and shall terminate twenty-four (24) months following the Closing Date.

(b) The covenants and agreements of the parties hereto contained in this Agreement shall, subject to the express terms thereof, survive the Closing indefinitely.

7.2 Indemnification of CBI by ABI. (a) From and after the Closing Date, ABI shall indemnify and save and hold harmless CBI and its subsidiaries and their respective officers, directors and Affiliates (collectively, the "*CBI Indemnified Parties*") from and against any Losses resulting from, arising out of, or incurred in connection with: (i) any failure of any representation or warranty made by ABI to be true and correct as of the date hereof and as of the

Closing Date (other than representations and warranties made as of another date, in which case the accuracy of such representations and warranties shall be determined as of such specified date) and (ii) any nonfulfillment or breach of any covenant or agreement made by ABI in this Agreement. For purposes of determining the existence of any inaccuracy in or breach of a representation or warranty and the measure of Losses for indemnification pursuant to clause (i) in this Section 7.2(a), such representation or warranty shall be read as if all materiality standards contained therein (i.e., qualifiers such as "material", "in all material respects", "Company Material Adverse Effect", or similar qualifiers) had been deleted, other than in Sections 3.8, the first sentence of Section 3.15(b) and Section 3.25 and with respect to the term "Material Contracts" in Sections 3.5, 3.6(a) and 3.20.

(b) Any indemnification of a CBI Indemnified Party pursuant to this Section 7.2 shall be effected by wire transfer or transfers of immediately available funds from ABI to an account designated in writing by the applicable CBI Indemnified Party to ABI within 15 days after the claim shall have been finally resolved (it being understood that a claim shall be "finally resolved" when (i) the parties to the dispute have reached an agreement in writing, (ii) a court of competent jurisdiction shall have entered a final and non-appealable order or judgment or (iii) an arbitration or like panel shall have rendered a final non-appealable determination with respect to the claim the parties have agreed to submit thereto).

7.3 Indemnification of ABI by CBI. (a) From and after the Closing Date, CBI shall indemnify and save and hold harmless ABI and its officers, directors and Subsidiaries (collectively, the "*ABI Indemnified Parties*") from and against any Losses suffered by any such ABI Indemnified Parties resulting from or arising out of: (i) any failure of any representation or warranty made by CBI to be true and correct as of the date hereof and as of the Closing Date (other than representations and warranties made as of another date, in which case the accuracy of such representations and warranties shall be determined as of such specified date) and (ii) any nonfulfillment or breach of any covenant or agreement made by CBI in this Agreement.

(b) Any indemnification of an ABI Indemnified Party pursuant to this Section 7.3 shall be effected by wire transfer or transfers of immediately available funds from CBI to an account designated by the applicable ABI Indemnified Party to CBI within 15 days after the claim shall have been finally resolved (it being understood that a claim shall be "finally resolved" when (i) the parties to the dispute have reached an agreement in writing, (ii) a court of competent jurisdiction shall have entered a final and non-appealable order or judgment or (iii) an arbitration or like panel shall have rendered a final non-appealable determination with respect to the claim the parties have agreed to submit thereto).

7.4 Procedures Relating to Indemnification. (a) If an Indemnified Party shall desire to assert any claim for indemnification provided for under this Article VII in respect of, arising out of or involving a claim or demand made by any Person (other than a party hereto or Affiliate thereof) against the Indemnified Party (a "*Third-Party Claim*"), such Indemnified Party shall notify the party liable for such indemnification (the "*Indemnifying Party*") in writing, and in reasonable detail (taking into account the information then available to such Indemnified Party), of the Third-Party Claim promptly after receipt by such Indemnified Party of written notice of the Third-Party Claim; *provided, however*, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party

shall have been actually prejudiced as a result of such failure. The Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third-Party Claim; *provided, however*, that the failure to deliver such copies shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure.

(b) If a Third-Party Claim is made against an Indemnified Party, the Indemnifying Party shall be entitled to participate in the defense thereof and, if it so chooses to assume the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. Should the Indemnifying Party so elect to assume the defense of a Third-Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof, unless the Third-Party Claim involves potential conflicts of interest or substantially different defenses for the Indemnified Party and the Indemnifying Party based on the advice of counsel. If the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in defense thereof and to employ counsel, at its own expense (except as provided in the immediately preceding sentence), separate from the counsel employed by the Indemnifying Party, it being understood that the Indemnifying Party shall control such defense. If the Indemnifying Party chooses to defend any Third-Party Claim, all the parties hereto shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information that are reasonably relevant to such Third-Party Claim, and use reasonable efforts to make employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the Indemnifying Party shall have assumed the defense of a Third-Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Third-Party Claim without the Indemnifying Party's prior written consent (which consent shall not be unreasonably withheld). The Indemnifying Party may pay, settle or compromise a Third-Party Claim without the written consent of the Indemnified Party, so long as such settlement includes (A) an unconditional release of the Indemnified Party from all liability in respect of such Third-Party Claim, (B) does not subject the Indemnified Party to any injunctive relief or other equitable remedy and (C) does not include a statement or admission of fault, culpability or failure to act by or on behalf of any Indemnified Party.

(c) If an Indemnified Party shall desire to assert any claim for indemnification provided for under this Article VII other than a claim in respect of, arising out of or involving a Third-Party Claim, such Indemnified Party shall notify the Indemnifying Party in writing, and in reasonable detail (taking into account the information then available to such Indemnified Party), of such claim promptly after becoming aware of the existence of such claim; *provided* that the failure to give such notification shall not affect the indemnification provided for hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure. If the Indemnifying Party does not respond to such notice within 45 days after its receipt, it shall have no further right to contest the validity of such claim.

7.5 Limitations on Indemnification.

(a) ABI shall have no liability for any claim for indemnification hereunder if the Loss associated with such claim is less than One Hundred Thousand Dollars ($100,000) (any such claim being referred to as a "*De Minimis Claim*"). ABI shall have no liability for indemnification pursuant to Section 7.2(a) with respect to Losses for which indemnification is provided thereunder unless the aggregate amount of such Losses (excluding all Losses associated with De Minimis Claims) exceeds Fifty Million Dollars ($50,000,000) (the "*Deductible*"), in which case ABI shall be liable for all such Losses (excluding all Losses associated with De Minimis Claims) in excess of the Deductible; provided that except as set forth below in no event shall the aggregate indemnification to be paid by ABI exceed Five Hundred Million Dollars ($500,000,000) (the "*Indemnity Cap*"). Notwithstanding the foregoing and except for fraud, the limitations and restrictions of the Deductible and the Indemnity Cap shall not apply to Losses incurred by CBI arising from, arising out of, in the nature of, or caused by any breach of the representations and warranties set forth in Sections 2.1, 2.2, 2.3, 3.1(a) (with respect to the first sentence only) 3.2, 3.3 and 3.12.

(b) The Buyer Parties and ABI agree that, notwithstanding Section 7.2 of this Agreement, the sole and exclusive remedy of the Buyer Parties for any breach of the representation and warranty set forth in the last sentence of Section 3.8 is through the Purchase Price Adjustment in accordance with Section 1.4.

(c) No Indemnified Party shall be entitled to recover from an Indemnifying Party more than once in respect of the same Losses.

7.6 Consequential Damages. Following the Closing, the indemnification provided in this Article VII shall be the exclusive remedy and in lieu of any and all other rights and remedies which the Indemnified Parties may have under this Agreement or otherwise against each other with respect to the transactions contemplated hereby for monetary relief with respect to any breach of any representation or warranty or any failure to perform any covenant or agreement set forth in this Agreement, and each party hereto each expressly waives any and all other rights or causes of action it or its Affiliates may have against the other party or its Affiliates now or in the future under any Law with respect to the subject matter hereof, except in either case for fraud of the other party or the parties' rights to seek specific performance in accordance with Section 10.14. Subject to the next sentence of this Section 7.6, no Person shall be liable under this Article VII for any consequential, punitive, special, incidental or indirect damages, including lost profits and diminution in value, except to the extent awarded by a court of competent jurisdiction in connection with a Third Party Claim. Notwithstanding anything to the contrary in this Agreement, the restriction in the preceding sentence on the right of a party hereunder to recover consequential, punitive, special, incidental and indirect damages, including lost profits and diminution in value, shall not apply where ABI fails to sell, or causes to be sold, the Shares to the Buyer Parties after all conditions precedent set forth in this Agreement to ABI's obligations to sell, or cause to be sold, the Shares to the Buyer Parties hereunder have been satisfied or waived.

7.7 Additional Indemnification Provisions.

(a) With respect to each indemnification obligation under this Agreement (i) each such obligation shall be calculated on an After-Tax Basis and (ii) all Losses shall be net of

any third-party insurance proceeds that have been recovered or are recoverable by the Indemnified Party in connection with the facts giving rise to the right of indemnification.

(b) If an Indemnifying Party makes any payment for any Losses suffered or incurred by an Indemnified Party pursuant to the provisions of this Article VII, such Indemnifying Party shall be subrogated, to the extent of such payment, to all rights and remedies of the Indemnified Party to any insurance benefits or other claims of the Indemnified Party with respect to such Losses and with respect to the claim giving rise to such Losses.

(c) The right to indemnification or other remedy based on any representations, warranties, obligations, covenants and agreements set forth in this Agreement or in any of the Ancillary Agreements, will not be affected by any investigation conducted with respect to, or any notice or knowledge acquired (or capable of being acquired), with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement; provided, however, that notwithstanding anything to the contrary contained herein, except as set forth on Section 7.7(c) of the ABI Disclosure Letter, ABI shall not have any liability relating to any breach of, or inaccuracy in, any representation or warranty made herein that, as of the date hereof, any Buyer Party had Knowledge of the breach or inaccuracy of the representation or warranty or of the facts relating to such breach or inaccuracy.

ARTICLE VIII
TERMINATION

8.1 Termination. This Agreement may be terminated at any time prior to the Closing Date:

(a) By mutual written consent of CBI and ABI;

(b) By ABI or CBI, by written notice to the other party, if the MIPA is terminated for any reason; and

(c) By ABI or CBI, by written notice to the other party, if the GM Agreement is terminated for any reason.

8.2 Effect of Termination. If this Agreement is terminated in accordance with Section 8.1, this Agreement shall become null and void and of no further force or effect with no liability to any Person on the part of any party hereto (or any of its representatives or Affiliates), except that:The terms and provisions of Section 7.6, this Section 8.2 and Article X shall survive and remain in full force and effect;

(b) No termination of this Agreement shall relieve any party hereto from any liability for any breach of this Agreement that arose prior to such termination or resulting from fraud of such party; and

(c) In the event of termination of this Agreement by ABI or CBI pursuant to Section 8.1(b) (but solely as a result of ABI exercising its right to terminate the MIPA under Section 11.1(b) thereof) or 8.1(c), then ABI shall promptly (but in no event later than two (2) Business Days after the date of such termination) cause Anheuser-Busch International Holdings,

LLC (or its designee) to pay, or cause to be paid, to CBI (or its designee) an amount equal to One Hundred Seventeen Million Dollars ($117,000,000) (the "*SPA Termination Fee*") by wire transfer of same day funds to any account designated by CBI (or its designee). For the avoidance of doubt, in no event shall any of ABI or its Affiliates be required to pay the SPA Termination Fee on more than one occasion.

ARTICLE IX
DEFINITIONS

9.1 Definition of Certain Terms. As used in this Agreement, the following terms have the meanings set forth below:

The terms defined in this Article IX, whenever used in this Agreement (including in the ABI Disclosure Letter), shall have the respective meanings indicated below for all purposes of this Agreement (each such meaning to be equally applicable to the singular and the plural forms of the respective terms so defined). All references herein to a Section, Article, Exhibit or Schedule are to a Section, Article, Exhibit or Schedule of or to this Agreement, unless otherwise indicated, and the words "hereof" and "hereunder" shall be deemed to refer to this Agreement as a whole and not to any particular provision. The words "includes" and "including" shall be deemed to be followed by the words "without limitation" whenever used.

ABI: the meaning set forth in the preamble.

ABI Disclosure Letter: the disclosure letter prepared by ABI, a copy of which is attached hereto as Schedule 1 and incorporated herein by reference.

ABI Indemnified Parties: the meaning set forth in Section 7.3(a).

ABI Required Approvals: the meaning set forth in Section 3.6(b).

Adjustment Consultation Period: the meaning set forth in Section 1.4(e).

Adjustment Review Period: the meaning set forth in Section 1.4(b).

Affiliate: with respect to any Person, a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. "Control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise; provided, however, that unless and until the closing of the GM Transaction has occurred, none of Grupo Modelo, GMC or any of their respective controlled Affiliates shall be considered Affiliates of ABI or any of its Subsidiaries (excluding Grupo Modelo, GMC or any of their controlled Affiliates) and none of ABI or any of its Subsidiaries (excluding Grupo Modelo, GMC or any of their controlled Affiliates) shall be considered Affiliates of Grupo Modelo, GMC or any of their Affiliates.

After-Tax Basis: in determining the amount of the payment necessary to indemnify any party against, or reimburse any party for, Losses, the amount of such Losses shall be determined net of any Tax benefit derived by the Indemnified Party as the result of sustaining such Losses and the amount of such payment shall be increased to take into account any net Tax cost incurred by the recipient thereof as a result of the receipt or accrual of the payment.

Agreement: the meaning set forth in the Preamble, the ABI Disclosure Letter, and all Exhibits and Schedules attached hereto and thereto and all amendments hereto and thereto made in accordance with Section 10.7.

Alcoholic Beverage Authorities: the United States Alcohol and Tobacco Tax and Trade Bureau, as well as the applicable state, local, municipal, provincial, foreign, and other Governmental Authorities that regulate the production and sale of alcoholic beverage products.

Allocated SG&A: the sum of (i) 'gastos de administracion' and 'Gastos de procesos y tecnología de información' of Marcas Modelo, S.A. de C.V., including, for the avoidance of doubt, depreciation and amortization in these accounts, but only as allocated to U.S. exports by multiplying the net cost defined above by the U.S. volumes and dividing this product by the total export volumes (including U.S. volumes) sold by Grupo Modelo and (ii) 'gastos de administracion' and 'Gastos de procesos y tecnología de información' of the companies and segments identified in Grupo Modelo as (a) Servicios Corporativos and (b) Servicios Generales, including, for the avoidance of doubt, depreciation and amortization in these accounts, but only as allocated to U.S. exports by multiplying the net cost defined above by the U.S. volumes and dividing this product by Grupo Modelo total sales volume (including U.S. volumes). For the avoidance of doubt, Allocated SG&A will exclude any overhead allocated and invoiced to Piedras Negras, Noroeste and Zachatecas breweries by the companies Diblo and Cenexis which is included in Brewery Operating Expense.

Ancillary Agreements: the Transition Services Agreement and the License Agreement.

Antitrust Law: the HSR Act, the Clayton Act of 1914, the Sherman Antitrust Act of 1890, the Federal Trade Commission Act, the Federal Economic Competition Law (Ley Federal de Competencia Económica) of Mexico and any other United States, Mexican, Belgian or other foreign, supranational, federal or state Laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade, including any applicable merger control rules.

Appurtenant Easements: the meaning set forth in Section 3.14(f).

Beer: beer, ale, porter, stout, malt beverages, and any other versions or combinations of the foregoing, including, non-alcoholic versions of any of the foregoing.

Brewery Operating Expense (Gastos de Operation):

1) All operating expense of Piedras Negras

2) For the breweries of Noroeste and Zachatecas, only the following costs will be included:

   a. Operating expenses that are exclusively born for U.S. export and identifiable as such in the accounting systems of Grupo Modelo;

   b. An allocation of operating expenses exclusively born for the export business (including the U.S.) calculated by multiplying such operating expense for such brewery by the U.S. volumes for such brewery and dividing this product by the total Grupo Modelo export volumes (including U.S. volumes) for such brewery;

   c. An allocation of operating expense that are not specific to any segment calculated by multiplying such operating expense for such brewery by the U.S. volumes for such brewery and dividing this product by the total Grupo Modelo volumes (including U.S. volumes) for such brewery.

   d. For the avoidance of doubt, operating expenses that are exclusively for the Mexico volume or non-U.S. export volume will not be included when calculating Brewery Operating Expense.

3) For U.S. volumes sold from the other breweries, the Brewery Operating Expense will equal the product of the volume-weighted Brewery Operating Expense per hectoliter for U.S. volume as determined above for Piedras Negras, Zachatecas and Noroeste multiplied by the total U.S. volume sold from the other breweries.

Business Day: any day other than Saturday, Sunday or any other day on which banks in the City of New York or Mexico City, Mexico are required or permitted to close.

Buyer Parties: collectively, CBI, and one or more Affiliates of CBI to whom CBI has assigned the right to purchase all or a portion of the Shares.

CBI: the meaning set forth in the preamble.

CBI Indemnified Parties: the meaning set forth in Section 7.2(a).

CBI Material Adverse Effect: the meaning set forth in Section 4.1.

CCC Company: the meaning set forth in the Recitals.

CCC Company Securities: any shares of capital stock or other equity interests in, or securities of, the CCC Company or any securities, rights or obligations convertible into, exchangeable for or exercisable to acquire any securities of the CCC Company.

CCC Company Shares: the meaning set forth in the Recitals.

Closing: the meaning set forth in Section 1.2.

Closing Date: the meaning set forth in Section 1.2.

Company: the meaning set forth in the Recitals.

Company Material Adverse Effect: any change, effect or circumstance that is materially adverse to the business, results of operations or financial condition of the Companies taken as a whole, in each case, other than and without taking into account any change, effect, development or circumstance relating to or resulting from (i) changes in general political or economic conditions; (ii) changes in general financial or securities markets conditions (including changes in exchange rates, commodities markets, exchange controls, monetary policy and inflation); (iii) any event, circumstance, change or effect that affects the industry or industries in which the Companies operates generally; (iv) any changes in Laws or interpretations thereof applicable to or affecting the Companies or any of their respective properties or assets; (v) any changes in IFRS, Mexican GAAP or other accounting principles or requirements; (vi) any outbreak or escalation of hostilities or war or any act of terrorism, or any natural disaster or other calamity; (vii) the announcement or the existence of this Agreement and the transactions contemplated hereby, including any related or resulting loss of or change in relationship with any customer, supplier, distributor or other business partner, or departure of any employee or officer, or any litigation or other proceeding; (viii) any failure to meet any internal or public projections, forecasts or estimates of earnings or revenue (provided, however, that, in the case of this clause (viii), the underlying cause for such failure may be considered in determining whether there may be a Company Material Adverse Effect); or (ix) compliance with the terms of, or the taking of any action permitted, contemplated or required by, or the not-taking of any action prohibited by, this Agreement, or the taking or not-taking of any such action with the prior written consent of the other parties hereto.

Confidentiality Agreement: the meaning set forth in Section 10.8.

Consent: any consent, order, approval, ratification, waiver or other authorization issued or granted by any Governmental Authority or any other Person, or any notice, registration or filing delivered to or filed with any Governmental Authority or any other Person, including any Permit.

Constellation Beers: Constellation Beers Ltd.

Contract: any agreement, contract, instrument, commitment, covenant, promissory note, bond, indenture, insurance policy, deed, lease, sublease, license, purchase order, sales order or other obligation or arrangement (whether written or oral) that is legally binding.

Current Production: Nominal capacity of Ten Million (10,000,000) hectoliters of Beer per annum.

De Minimis Claim: the meaning set forth in Section 7.5(a).

Debt Financing: the meaning set forth in Section 5.5(b).

Deductible: the meaning set forth in Section 7.5(a).

Depreciation and Amortization: (i) all depreciation and amortization of Piedras Negras included in Direct COGS or Brewery Operating Expense, and (ii) for the breweries of Noroeste and Zachatecas the allocated depreciation and amortization included in Direct COGS or Brewery Operating Expense calculated by multiplying the total depreciation and amortization of the brewery by the U.S. volume sold by the brewery and dividing this product by the total volumes (including U.S. volumes) sold by the brewery. For the avoidance of doubt, any depreciation and amortization in Allocated SG&A shall be excluded.

Diblo: the meaning set forth in the Recitals.

Dijon: the meaning set forth in the Recitals.

Direct COGS:

1. For volumes sold from the brewery of Piedras Negras the Cost of Sales (Costo de cerveza marcas propias) for Piedras Negras brewery

2. For volumes sold from the breweries of Noroeste and Zachatecas: the sum of (i) the Production Cost (Costo total de producción de cerveza) per hectoliter for export beer for each brewery multiplied by the U.S. volume sold from each brewery, where the Production Cost per hectoliter for such brewery will be calculated as the total Production Cost for export volume for such brewery divided by the total export volume produced in 2012 in that brewery and (ii) Cost of Goods Sold (Costo de cerveza marcas propias) not included in the Production Cost will be allocated to the U.S. volumes as set forth below:

   a. Costs that are exclusively born for U.S. export and identifiable as such in the accounting systems of Grupo Modelo;

   b. An allocation of such brewery cost exclusively born for the export business (including the U.S.), such allocation to be calculated by multiplying such brewery cost by the U.S. volumes for such brewery and dividing this product by the total Grupo Modelo export volumes (including U.S. volumes) for such brewery;

   c. An allocation of such brewery cost not specific to any segment, such allocation to be calculated by multiplying such brewery cost by the U.S. volumes for such brewery and dividing this product by the total Grupo Modelo volumes (including U.S. volumes) for such brewery;

   d. For the avoidance of doubt, costs that are exclusively born for the Mexico volume or non-U.S. export volume will not be included when calculating COGS.

3. For U.S. volumes sold from the other breweries, the Direct COGS will equal the product of the volume-weighted average Direct COGS per hectoliter for U.S. volume as determined above for Piedras Negras, Zachatecas and Noroeste multiplied by the total U.S. volume sold from the other breweries.

DOJ Action: United States v. Anheuser-Busch InBev SA/NV and Grupo Modelo S.A.B. de C.V., Case 1:13-cv-00127 (January 31, 2013).

Dollars: dollars of the United States of America.

Due Date: with respect to any Tax Return, the date on which such Tax Return is due to be filed (taking into account any valid extensions).

EBITDA:

(i) U.S. Sales plus
(ii) Other Income less
(iii) Direct COGS less
(iv) Brewery Operating Expense plus/(minus)
(v) Other Operating Income/(Expense) less
(vi) U.S. Marketing Cost less
(vii) Allocated SG&A plus
(viii) Depreciation and Amortization

All of the foregoing amounts will be exclusively determined by reference to the information set forth or reflected in line items in the IFRS audited financial statements of Grupo Modelo and its Affiliates for the year 2012 or, if not set forth or reflected in such line items, based on (i) the entries set forth in Grupo Modelo's accounting and reporting systems that are used to prepare Grupo Modelo's IFRS audited financial statements and (ii) the categorizations as determined in Grupo Modelo's standard reports, all with Mexican Peso amounts converted at a rate of 13.18 pesos per U.S. $, which represents the daily average exchange rate for Grupo Modelo's sales to Crown Imports LLC in 2012. An example of the calculation of EBITDA is set forth as Exhibit C hereto.

Employee Benefit Plans: has the meaning set forth in Section 3.18(a).

Environmental Laws: all Laws pertaining to air and water quality, Hazardous Materials, and protection of the environment and human health, including but not limited to, all as amended: the *Ley General del Equilibrio Ecológico y la Proteccion al Medio Ambiente*, the *Ley General para la Prevención y Gestión Integral de los Residuos* and the *Ley de Aguas Nacionales* and the regulations issued in connection therewith, and all similar laws, statutes, codes and ordinances in each municipality in which the Piedras Negras Plant is located and of any other federal, state or local governmental agency, authority or bureau enacted, promulgated or amended under any of the foregoing.

Environmental Reports: all material assessments, reports or audits in the possession of ABI as of the date hereof regarding environmental matters associated with the Piedras Negras Plant or the Future Expansion, including any environmental Permits, hazardous materials business plans and notices alleging violations of any Environmental Laws or environmental Permit.

Equipment: all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property of every kind owned by the Company or used by the Company in the operation of the Piedras Negras Plant, and all computer software and computer systems used in or to support the operation thereof.

Final EBITDA Amount: the meaning set forth in Section 1.4(f).

Final Statement: the meaning set forth in Section 1.4(f).

Financial Information: the meaning set forth in Section 3.8.

Financing: the meaning set forth in Section 4.8.

Financing Commitment: the meaning set forth in Section 4.8.

Future Expansion: the construction and completion of expansion phases II and III of the Piedras Negras Plant, which, once complete will allow the Piedras Negras Plant to brew and bottle a nominal capacity of twenty million (20,000,000) hectoliters of Beer per annum.

GAAP: generally accepted accounting principles, consistently applied.

Glass Plant: the plant as of the date hereof that is owned by Industria Vidriera de Coahuila, S.A. de C.V. and located in Coahuila, Mexico.

GM Agreement: the Transaction Agreement by and among Grupo Modelo, S.A.B. de C.V., Diblo, S.A. de C.V., Anheuser-Busch InBev SA/NV, Anheuser-Busch International Holdings, Inc. and Anheuser-Busch México Holdings, S. de R.L. de C.V., dated as of June 28, 2012.

GMC: the meaning set forth in the Recitals.

GM Transaction: the meaning set forth in the Recitals.

Governmental Authority: any foreign or domestic, federal, state, provincial, local, municipal or other governmental judicial, arbitral, legislative, executive or regulatory department, division, commission, administration, board, bureau, agency, court, tribunal, instrumentality or other body (whether temporary, preliminary or permanent).

Governmental Order: any order, writ, judgment, injunction, decree, declaration, stipulation, determination or award entered by or with any Governmental Authority.

Grupo Modelo: the meaning set forth in the Recitals.

Hazardous Materials: any substance, material or waste, regardless of quantity or concentration, that is: (1) regulated under or defined as, or otherwise included in the definition of, a "hazardous waste," "hazardous material," "hazardous substance," "acutely hazardous waste", "toxic substance", pollutant, toxic pollutant, or "restricted hazardous waste" under any applicable Environmental Law, (2) petroleum, petroleum product or petroleum distillate, (3) asbestos, (4) polychlorinated biphenyls and constituents and degradation products of any of the foregoing.

HSR Act: the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the rules and regulations promulgated thereunder.

IFRS: the International Financial Reporting Standards consistently applied.

Importer: the meaning set forth in the Recitals.

Importer Interest: the meaning set forth in the Recitals.

Indemnified Party: an ABI Indemnified Party or a CBI Indemnified Party.

Indemnifying Party: the meaning set forth in Section 7.4(a).

Indemnity Cap: the meaning set forth in Section 7.5(a).

Independent Accountant: the meaning set forth in Section 1.4(f).

Initial EBITDA Accountant: the meaning set forth in Section 1.4(a).

Initial EBITDA Amount: the meaning set forth in Section 1.4(a).

Initial Statement: the meaning set forth in Section 1.4(a).

Intercompany Agreements: Contracts and other instruments between any of the Companies, on the one hand, and Grupo Modelo or any Affiliate of Grupo Modelo (other than the Companies), on the other hand.

Interim Supply Agreement: that certain Interim Supply Agreement by and between Grupo Modelo and Importer, and to be executed at the MIPA Transaction Closing.

Inventory: the meaning set forth in Section 3.16.

Knowledge: (i) with reference to ABI or a Company, the actual knowledge (after reasonable inquiry and investigation) of those Persons listed on Section 9.1(a) of the ABI Disclosure Letter and (ii) with reference to the Buyer Parties, the actual knowledge (after

reasonable inquiry and investigation of those Persons listed on Section 9.1(a) of the ABI Disclosure Letter.

Land: that certain real property located in Nava, Coahuila, Mexico comprised of approximately 750 acres and more specifically described as follows: Rustic Property located at the Federal Highway No. 57 (Monclova-Piedras Negras), Km. 233+200, Official No. 85, Río Escondido, Municipality of Nava, State of Coahuila, Mexico, with an extension of 334-04-70 Acres, and the description specified in the Public Deeds No. 165, 187 and 17, and related documents.

Laws: (i) any constitution, statute, law, code, ordinance, regulation, treaty, rule, common law, policy or interpretation enacted, published or promulgated by any Governmental Authority, including, but not limited to, laws and regulations applicable to the production and sale of alcoholic beverage products, "dram shop" laws, safety laws, building, health, fire, safety, subdivision, zoning and other similar regulatory laws or other similar regulations; and (ii) with respect to a particular Person, the terms of any Governmental Order or Permit binding upon such Person or its assets or properties.

License Agreement: the Amended and Restated Sub-License Agreement dated as of the Closing Date between Marcas Modelo, S.A. de C.V. and Constellation Beers in the form attached hereto as Exhibit A.

License Purchase Price: the meaning set forth in Schedule 1.3(1).

Lien: any mortgage, pledge, deed of trust, lien (including environmental and Tax liens), hypothecation, charge, claim, security interest, title defect, encumbrance, burden, charge or other similar restriction, lease, sublease, claim, title retention agreement, preferential arrangement, option, easement, covenant, encroachment or other adverse claim of any kind, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

Losses: all losses, damages, costs, expenses, liabilities, obligations, Taxes and claims of any kind (including any action brought by any Governmental Authority or other Person and including reasonable attorneys' fees disbursements).

Marcas Modelo: Marcas Modelo, S.A. de. C.V.

Material Contracts: all Contracts in effect as of the date hereof to which the Company is a party (and, including, without limitation, all Contracts relating or pertaining to the ownership, operation or use of the Piedras Negras Plant or the Future Expansion) that (i) contain a term that is equal to or greater than one (1) year and (ii) impose obligations on ABI that equal to or exceed Five Hundred Thousand Dollars ($500,000) over the course of any twelve (12) month period.

MIPA: the meaning set forth in the Recitals.

MIPA Transaction: the meaning set forth in the Recitals.

MIPA Transaction Closing: the Closing (as defined in the MIPA).

Non-GM Beer: any Beer other than the Product (as defined in the License Agreement) or a Brand Extension Beer (as defined in the License Agreement).

Notice of Disagreement: the meaning set forth in Section 1.4(e).

Offering Document: the meaning set forth in Section 5.5(b)(ii).

Organizational Documents: with respect to any corporation, its articles or certificate of incorporation and by-laws, and with respect to any other type of entity, its organizational documents.

Other Income: (i) Other Income of the brewery of Piedras Negras net of any cost linked to such other income, (ii) royalty income from U.S. volumes and (iii) marketing income resulting from reimbursement by Crown Imports LLC.

Other Operating Income/Expense: Otros (gastos) y productos -neto- of the brewery of Piedras Negras.

Permit: any permit (including, without limitation, building, housing, safety, fire, health, subdivision, zoning, water, wastewater, drainage and irrigation permits), license, exemption, variance, registration, security clearance, approval, membership, certificates (including, without limitation, any certificate(s) of occupancy), consents, orders, decrees, notifications or other authorization issued or granted by any Governmental Authority.

Permitted Liens: (i) Liens for Taxes, assessments or other governmental charges not yet due and payable or due but not delinquent or being contested in good faith by appropriate proceedings; (ii) restrictions on transfer imposed by applicable securities laws or state corporation, limited liability or partnership laws; (iii) Liens arising under this Agreement or the Ancillary Agreements; and (iv) Liens created by CBI or its Affiliates.

Person: any natural person, firm, partnership, association, corporation, company, trust, business trust, Governmental Authority or other entity.

Piedras Negras Plant: the brewery owned as of the date hereof by the Company and located on the Land and, including, but not limited to, all structures, buildings, building systems irrigation systems, drainage systems, wells, septic systems, roads, fixtures and other improvements on such Land.

Plant Force Majeure: any event (other than a strike, lockout or other labor or industrial dispute) including (a) fire, explosion, earth quake, flood, storm, blight, drought, plague, act of God or other act of nature, casualty, act of terrorism, war, riots or civil disturbances, government regulations, or acts of civil or military authorities; (b) any taking or pending or threatened taking, in condemnation or under the right of eminent domain or similar right, of the Plant Property, or a portion thereof; or (c) inability to obtain, or malfunction or breakdown of, any machinery or equipment, failure or malfunction of any utilities or telecommunications systems or common carriers, water,

labor, material or fuel shortages; in each case to the extent causing the Piedras Negras Plant to be unable to manufacture, bottle, and package at least thirty percent (30%) of its daily production of Beer (measured with respect to average daily production of Beer in the preceding 12 months) for a period of 60 consecutive days.

Plant Property: means, collectively, the Land and the Piedras Negras Plant.

Post-Closing Period: any taxable period that begins after the Closing Date.

Post-Closing Straddle Period: the portion of any Straddle Period that begins after the Closing Date.

Pre-Closing Period: any taxable period that ends on or before the Closing Date.

Pre-Closing Straddle Period: the portion of any Straddle Period that ends on or before the Closing Date.

Preliminary Adjustment Amount: the meaning set forth in Section 1.4(a).

Purchase: the meaning set forth in Section 1.1.

Purchase Price: the meaning set forth in Section 1.3.

Purchase Price Adjustment: the meaning set forth in Section 1.4(h).

Recipients: the meaning set forth in Section 5.12(o).

Remedial Action: the meaning set forth in Section 5.2.

Representatives: the directors, officers, employees, agents, consultants, advisors, (including legal, financial and accounting advisors), and other representatives of ABI, the Companies, CBI and their respective Affiliates, as applicable.

Required Information: the meaning set forth in Section 5.5(b)(i).

Right Pocket: the meaning set forth in Section 5.15(a).

Servicios Company: the meaning set forth in the Recitals.

Servicios Company Securities: any shares of capital stock or other equity interests in, or securities of, the Servicios Company or any securities, rights or obligations convertible into, exchangeable for or exercisable to acquire any securities of the Servicios Company.

Servicios Company Shares: the meaning set forth in the Recitals.

Shares: the meaning set forth in the Recitals.

Share Permitted Liens: restrictions on transfer imposed by applicable securities law.

SPA Termination Fee: the meaning set forth in Section 8.2(c).

Specified Court: the meaning set forth in Section 10.13.

Straddle Period: any taxable period that begins on or before and ends after the Closing Date.

Subsidiary: with respect to any Person (other than a natural Person) means any other Person of which (a) the first mentioned Person or any Subsidiary thereof is a general partner, (b) voting power to elect a majority of the board of directors or others performing similar functions with respect to such other Person is held by the first mentioned Person and/or by any one or more of its Subsidiaries or (c) at least 50% of the equity interests of such other Person is, directly or indirectly, owned or controlled by such first mentioned Person and/or by any one or more of its Subsidiaries.

Target EBITDA Amount: $310,000,000.

Tax: (a) all foreign, U.S. federal, state or local taxes, fees, assessments, levies or other governmental charges whatsoever, including all income, gross receipts, franchise, withholding, unemployment insurance, social security, sales, use, excise, real and personal property, municipal, capital, stamp, transfer, license, payroll, VAT and workers' compensation taxes, or any liability for any of the foregoing together with all interest, penalties and additions imposed by any Governmental Authority responsible for the imposition of any Tax (foreign or domestic) (a "*Taxing Authority*") as a transferee or successor and (b) liability for the payment of any amounts of the type described in (a) as a result of being a party to any agreement or any express or implied obligation to indemnify another Person.

Tax Contest: an audit, claim, dispute, controversy, hearing, or administrative, judicial, or other proceeding relating to Taxes or Tax Returns.

Tax Return: all returns, certifications, forms, reports or other information required to be supplied to any Taxing Authority relating to Taxes including any attachments thereto.

Taxing Authority: the meaning set forth in the definition of Taxes set forth in this Section 9.1.

Third-Party Claim: the meaning set forth in Section 7.4(a).

Third-Party Sale Agreement: the meaning set forth in Section 5.8(b).

Transition Services Agreement: Transition Services Agreement by and between ABI and CBI in the form attached hereto as Exhibit B.

Up-Front Payment: the portion of the purchase price allocated to the License Purchase Price which is being paid as consideration for the licenses granted to Constellation Beers as of the date hereof pursuant to the License Agreement.

U.S. Marketing Cost: [****]

U.S. Sales: all revenues derived by Grupo Modelo and its Affiliates from selling Product (as defined in the Importer Agreement between Extrade II, S.A. de C.V. and Crown Imports LLC, dated January 2, 2007, as amended to the date hereof) to Importer and its Affiliates in 2012 net of any discounts for early payment and rebates released from '(Gastos) y productas financieros – neto' of Grupo Modelo's trial balance (for the avoidance of doubt, only such discounts and rebates shall be netted and not any other items of (Gastos) y productas financieros – neto').

Utilities Facilities: the meaning set forth in Section 3.15(f).

Wrong Pocket: the meaning set forth in Section 5.15(a).

Wrong Pocket Asset: the meaning set forth in Section 5.15(a).

Wrong Pocket Liability: the meaning set forth in Section 5.15(a).

9.2 Certain Interpretive Matters. In this Agreement, unless the context otherwise requires:words of the masculine or neuter gender shall include the masculine and/or feminine gender, and words in the singular number or in the plural number shall each include the singular number or the plural number;

(b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;

(c) reference to any agreement (including this Agreement) or other Contract or any document means such agreement, Contract or document as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(d) all amounts in this Agreement and the Ancillary Agreements are stated and shall be paid in United States dollars unless specifically otherwise provided;

(e) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term;

(f) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including;"

(g) "hereto", "herein", "hereof", "hereinafter" and similar expressions refer to this Agreement in its entirety, and not to any particular Article, Section, paragraph or other part of this Agreement;

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

(h) reference to any "Article" or "Section" means the corresponding Article(s) or Section(s) of this Agreement;

(i) the descriptive headings of Articles, Sections, paragraphs and other parts of this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement or any of the terms or provisions hereof;

(j) reference to any Law or Governmental Order, means (A) such Law or Order as amended, modified, codified, supplemented or reenacted, in whole or in part, and in effect from time to time; and (B) any comparable successor Laws or Governmental Orders; and

(k) any Contract, instrument, insurance policy, certificate or other document defined or referred to in this Agreement means such Contract, instrument, insurance policy, certificate or other document as from time to time amended, modified or supplemented, including (in the case of Contracts or instruments) by waiver or Consent and all attachments thereto and instruments and other documents incorporated therein.

ARTICLE X
GENERAL PROVISIONS

10.1 Expenses. Except as otherwise specifically provided in this Agreement, ABI and CBI shall bear their respective expenses, costs and fees (including attorneys', auditors' and financing fees, if any) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby are effected.

10.2 Further Actions. Each party shall execute and deliver such certificates and other documents and take such other actions as may reasonably be requested by the other party in order to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated by this Agreement.

10.3 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by fax or telegram, as follows:

If to CBI:

Constellation Brands, Inc.
207 High Point Drive
Building 100
Victor, New York 14564
Attn: General Counsel
Telephone: +1 (585) 678-7266
Fax: +1 (585) 678-7103

with a required copy (which copy shall not constitute notice hereunder) to:

Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604
Attn: James O. Bourdeau
Telephone: +1 (585) 263-1000
Fax: +1 (585) 263-1600

If to ABI:

Anheuser-Busch InBev SA/NV
Brouwerijplein 1
Leuven 3000
Belgium
Attn: Chief Legal Officer & Company Secretary
Telephone: +32 16 276942
Fax: +32 16 506699

with a copy (which copy shall not constitute notice hereunder) to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attn: Frank J. Aquila
George J. Sampas
Krishna Veeraraghavan
Telephone: +1 (212) 558-4000
Fax: +1 (212) 558-3588

or, in each case, at such other address as may be specified in writing to the other party hereto.

All such notices, requests, demands, waivers and other communications so delivered, mailed or sent shall be deemed to have been received (i) if by personal delivery, on the day delivered, (ii) if by certified or registered mail, on the date of receipt, (iii) if by next-day or overnight mail or delivery, on the day delivered or (iv) if by fax or telegram, on the day on which such fax or telegram was sent, *provided* that a copy is also sent by certified or registered mail.

10.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

10.5 Disclosure Letters. Any disclosure contained in the ABI Disclosure Letter shall apply to any other section or subsection of such disclosure letter, where the applicability of such disclosure is reasonably apparent. The mere inclusion of any item in a disclosure letter as an exception to a representation or warranty of CBI or ABI in this Agreement shall not be deemed to be an admission that such item is a material exception, fact, event or circumstance, or that such item, individually or in the aggregate, has had or is reasonably expected to have, a Company Material Adverse Effect or trigger any other materiality qualification.

10.6 Assignment; Successors; Third-Party Beneficiaries. This Agreement shall not be assignable by any party hereto without the prior written consent of all of the other parties and any attempt to assign this Agreement without such consent shall be void and of no effect, except that ABI or CBI may assign, in whole or from time to time in part, to one or more of their respective Affiliates, any of their rights hereunder, but no such transfer or assignment shall relieve ABI or CBI of their respective obligations under this Agreement, as applicable.

10.7 Amendment; Waivers, Etc. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. The waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall not be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that any party may otherwise have at law or in equity.

10.8 Entire Agreement. This Agreement (including the schedules and exhibits hereto, which are incorporated into this Agreement by this reference and made a part hereof), the Confidentiality Agreement, dated as of May 26, 2012, by and between CBI, ABI and solely with respect to Section 2 thereof, Grupo Modelo (the "*Confidentiality Agreement*"), each of the Ancillary Agreements, the MIPA and the Interim Supply Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and thereof, and supersede all prior or contemporaneous agreements and understandings, whether written or oral, among the parties hereto, or any of them, with respect to the subject matter hereof and thereof.

10.9 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction in such manner as shall effect as nearly as lawfully possible the purposes and intent of such invalid, illegal or unenforceable provision.

10.10 Headings. The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

10.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

10.12 Governing Law. This Agreement shall be governed by, enforced pursuant with and construed in accordance with the laws of the State of New York, without regard to the

conflict of laws principles, to the extent such principles are not mandatorily applicable by statute and would require or permit the application of the laws of another jurisdiction.

10.13 Consent to Jurisdiction/Venue. Each party hereto hereby waives, to the extent permitted by Law, all jurisdictional defenses, objections as to venue and any rights to appeal, review or nullify such award by any court or tribunal. Each of the parties hereby submits to the exclusive jurisdiction of any court of competent jurisdiction in any Federal or State Court in the City of New York, County of New York, (the "*Specified Court*") in any action, suit or proceeding arising out of or relating to this Agreement and the non-exclusive jurisdiction of the Specified Court with respect to the enforcement of any award thereunder.

10.14 Specific Performance. Each of the parties hereto hereby agree that (i) the Shares are a unique property, and (ii) irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached, and that monetary damages or other legal remedies would not be an adequate remedy for any failure to purchase or sell the Shares or consummate the Purchase or for any such damages. Accordingly, except as otherwise provided in Section 7.6, the parties hereto acknowledge and hereby agree that in the event of any breach or threatened breach by ABI, on the one hand, or the Buyer Parties, on the other hand, of any of their respective covenants or obligations set forth in this Agreement, ABI, on the one hand, and the Buyer Parties, on the other hand, shall be entitled, in addition to all other remedies available under Law or equity, to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement by the other (as applicable), and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other (as applicable) under this Agreement, and this right shall include the right of ABI to cause CBI to fully enforce the terms of the Financing Commitment, including by requiring CBI to file one or more lawsuits against the lenders party to the Financing Commitment to fully enforce the obligations of such lenders under the Financing Commitment, as well as the right of CBI to cause ABI to cause the Shares to be transferred to the Buyer Parties upon satisfaction or waiver of all conditions to ABI's obligation to transfer, or cause to be transferred, such Shares to the Buyer Parties.

(b) Each of ABI, on the one hand, and the Buyer Parties, on the other hand, hereby agrees not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of this Agreement by ABI or the Buyer Parties, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of ABI or the Buyer Parties, as applicable, under this Agreement. Any party seeking an injunction or injunctions to prevent breaches or threatened breaches of, or to enforce compliance with, the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with such order or injunction. Subject to Section 7.6, the parties hereto further agree that (x) by seeking the remedies provided for in this Section 10.14, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement (including monetary damages) and (y) nothing set forth in this Section 10.14 shall require any party hereto to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 10.14 prior or as a condition to exercising any termination right under Article VIII (and pursuing

damages after such termination), nor shall the commencement of any legal proceeding pursuant to this Section 10.14 or anything set forth in this Section 10.14 restrict or limit any party's right to terminate this Agreement in accordance with the terms of Article VIII or pursue any other remedies under this Agreement that may be available then or thereafter. For the avoidance of doubt, the Buyer Parties acknowledge and hereby agree that ABI may pursue both a grant of specific performance and the Drag-Along Right (as defined in the MIPA), provided that ABI shall not be permitted or entitled to receive both a grant of specific performance and to consummate a Participatory Transaction (as defined in the MIPA). Unless the Closing has occurred, ABI's right to specific performance contained in this Section 10.14 and its rights pursuant to the Drag-Along Right (as defined in the MIPA) in Section 12.5(b) of the MIPA shall be its sole and exclusive remedy for any breach or threatened breach of this Agreement by CBI.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

ANHEUSER-BUSCH INBEV SA/NV

By: Bob Golden / John Blood
Name: Authorized Representative
Title: Authorized Representative

CONSTELLATION BRANDS, INC.

By:
Name:
Title:

[*Signature Page to SPA*]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

ANHEUSER-BUSCH INBEV SA/NV

By:
Name:
Title:

CONSTELLATION BRANDS, INC.

By:
Name: Robert Sands
Title: President and CEO

[*Signature Page to SPA*]

EXHIBIT C

EXAMPLE OF EBITDA CALCULATION

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

SCHEDULE 1
ABI DISCLOSURE LETTER

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

SCHEDULE 1.3
PURCHASE PRICE ALLOCATION

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

SCHEDULE 1.4
PURCHASE PRICE ADJUSTMENT ALLOCATION

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

EXECUTION COPY

FIRST AMENDMENT TO
STOCK PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO STOCK PURCHASE AGREEMENT (this "**Amendment**") is made and entered into as of April 19, 2013, and amends that certain Stock Purchase Agreement, dated as of February 13, 2013 (the "**Original Execution Date**"), between **Anheuser-Busch InBev SA/NV**, a public company organized under the laws of Belgium ("**ABI**"), and **Constellation Brands, Inc.**, a Delaware corporation ("**CBI**") (the "**Agreement**").

W I T N E S S E T H

WHEREAS, pursuant to the terms and conditions of the Agreement, ABI has agreed, among other things, to cause all of the issued and outstanding shares of capital stock of (i) Compañia Cervecera de Coahuila, S.A. de C.V., a *sociedad anónima* de capital variable organized under the laws of Mexico and (ii) all of the issued and outstanding shares of capital stock of Servicios Modelo de Coahuila, S.A. de C.V., a *sociedad anónima* de capital variable organized under the laws of Mexico, in each case, to be sold to CBI or one of its designees; and

WHEREAS, the undersigned, being all of the parties to the Agreement, desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree to amend the Agreement as follows:

1. Capitalized terms used but not otherwise defined herein or in any annex or exhibit attached hereto shall have the meanings given to them in the Agreement.

2. The definition of Future Expansion in Section 9.1 of the Agreement is hereby amended to change the phrase "brew and bottle" to "brew and package".

3. Section 3.26 of the Agreement is hereby amended, by appending the following representation and warranty to the end of that section (with such representation and warranty being made as of the date of this Amendment):

> To the Knowledge of ABI and as of the date hereof, there are no material impediments (physical, legal, regulatory, or otherwise) to the expansion of the Piedras Negras Plant to brew and package a nominal capacity of thirty million (30,000,000) hectoliters of Beer per annum.

4. Section 4.8 of the Agreement is hereby amended to change the reference from "ABI's existing credit facilities" to "CBI's existing credit facilities", in the third-to-last sentence of that section.

5. Section 5.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

5.7 Intentionally Omitted.

6. Section 5.16 of the Agreement is hereby deleted in its entirety and replaced with the following:

5.16 Employee Matters

(a) In the event that CBI desires to hire, or desires to cause the CCC Company, the Servicios Company, or any of CBI's Affiliates to hire within one hundred eighty (180) days following the Closing Date, any independent contractor of the CCC Company or an employee or independent contractor of Grupo Modelo or any of its Subsidiaries other than those employees or independent contractors set forth on Annex A hereto, then ABI shall not, and ABI shall cause its Affiliates, Grupo Modelo and each Grupo Modelo Affiliate not to interfere with any negotiations relating to the hiring of such an employee. For purposes of this **Section 5.16(a)**, interference includes enforcement of any non-compete clause, offers to increase compensation or other benefits (other than Grupo Modelo broadly-offered increases).

(b) CBI shall not and shall not permit its Subsidiaries to, directly or indirectly, hire, solicit or encourage to leave the employment of ABI or any of its Affiliates any employee necessary to and actually providing transition services under the Transition Services Agreement with whom CBI, any of its Subsidiaries or any of their Representatives come into contact with in connection with receiving such transition services; provided, however, that the foregoing provision shall not apply to employees terminated by ABI or its Affiliate or general advertisements or solicitations that are not specifically targeted at such persons.

(c) ABI shall not and shall not permit its Subsidiaries to, directly or indirectly, hire, solicit or encourage to leave the employment of, any employee of any of the Companies; provided, however, that the foregoing provision shall not apply to employees terminated by any of the Companies or general advertisements or solicitations that are not specifically targeted at such persons.

7. Exhibit A to the Agreement is hereby deleted in its entirety and replaced with Exhibit A attached hereto.

8. Exhibit B to the Agreement is hereby deleted in its entirety and replaced with Exhibit B attached hereto.

9. An Annex A is hereby added to the Agreement in the form of Annex A attached hereto.

10. (a) All references in the Agreement to "the date hereof", "herein" or "the date of this Agreement" shall refer to the Original Execution Date and (b) the date on which the representations and warranties set forth in Articles III and IV of the Agreement are made by ABI or CBI shall not change as a result of the execution of this Amendment and shall be made as of such dates as they were in the Agreement, in each of cases (a) and (b), unless expressly indicated otherwise in this Amendment.

11. Except as expressly provided above, all terms and conditions of the Agreement shall remain unchanged and in full force and effect.

12. This Amendment shall be governed by, enforced pursuant with and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles, to the extent such principles are not mandatorily applicable by statute and would require or permit the application of the laws of another jurisdiction. Each party hereto hereby waives, to the extent permitted by Law, all jurisdictional defenses, objections as to venue and any rights to appeal, review or nullify such award by any court or tribunal. Each of the parties hereby submits to the exclusive jurisdiction of any court of competent jurisdiction in any Federal or State Court in the City of New York, County of New York, in any action, suit or proceeding arising out of or relating to this Amendment and the non-exclusive jurisdiction of any such court with respect to the enforcement of any award thereunder.

13. This Amendment may be executed in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, and all of which, taken together, shall be deemed to constitute one and the same instrument. This Amendment may be executed by facsimile signature.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

ANHEUSER-BUSCH INBEV SA/NV

By:
Name: Benoit Loore
Title: VP Legal Corporate & Compliance

By:
Name: A. RAUDON
Title: V.P. CONTROL

CONSTELLATION BRANDS, INC.

By:
Name:
Title:

[*Signature Page to First Amendment to Stock Purchase Agreement*]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

ANHEUSER-BUSCH INBEV SA/NV

By:
Name:
Title:

By:
Name:
Title:

CONSTELLATION BRANDS, INC.

By:
Name: Thomas J. Mullin
Title: Executive Vice President

ANNEX A

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

EXHIBIT A

FORM OF LICENSE AGREEMENT

EXHIBIT A
TO FIRST AMENDMENT TO STOCK PURCHASE AGREEMENT

AMENDED AND RESTATED SUB-LICENSE AGREEMENT

BETWEEN

MARCAS MODELO, S.A. DE C.V.

AND

CONSTELLATION BEERS LTD.

DATED: _____, 2013

AMENDED AND RESTATED SUB-LICENSE AGREEMENT

This Amended and Restated Sub-license Agreement ("**Agreement**"), dated this ___ day of _____, 2013, is by and between Marcas Modelo, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico ("**Marcas Modelo**"), and Constellation Beers Ltd., a Maryland corporation ("**Constellation Beers**"), and amends and replaces, in its entirety, that certain Sublicense Agreement dated the 2nd day of January, 2007, as subsequently amended (the "**Original Agreement**") by and between Marcas Modelo and Crown Imports LLC, a Delaware limited liability company ("**Crown**").

WITNESSETH:

WHEREAS, on July 17, 2006, Diblo, S.A. de C.V., a Mexican variable stock corporation, and Barton Beers, Ltd., a Maryland corporation ("**Barton**"), agreed to establish and engage in a joint venture for the principal purpose of importing, marketing and selling Product (as defined below), and, in connection therewith, on January 2, 2007, caused Crown to be formed and Crown and Extrade II, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico ("**Extrade II**") to enter into the Original Agreement;

WHEREAS, on February 4, 2009, Barton changed its name to Constellation Beers Ltd.;

WHEREAS, on June 28, 2012, Anheuser-Busch InBev SA/NV ("**ABI**"), Constellation Brands, Inc. ("**Constellation**"), Constellation Beers and Constellation Brands Beach Holdings, Inc. ("**Beach Holdings**") entered into that certain Membership Interest Purchase Agreement (the "**Membership Interest Purchase Agreement**"), pursuant to which ABI and Constellation agreed, *inter alia*, to amend and restate the Original Agreement;

WHEREAS, on [●], 2013, ABI, Constellation, Constellation Beers and Beach Holdings amended the Membership Interest Purchase Agreement to provide for the amendment and restatement of the Original Agreement as set forth herein;

WHEREAS, on [●] 2013, ABI and CBI have entered into that certain Stock Purchase Agreement (the "**Brewery SPA**"), pursuant to which CBI agreed to purchase, or cause to be purchased by its designee(s), all of the issued and outstanding shares of capital stock of Compañia Cervecera de Coahuila, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico, and all of the issued and outstanding shares of capital stock of Servicios Modelo de Coahuila, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico;

WHEREAS, pursuant to the Interim Supply Agreement (as defined below), beginning on the date hereof, Grupo Modelo (defined below) will supply to Crown Interim Products (as defined below);

WHEREAS, substantially contemporaneously with the execution of this Agreement, Constellation Beers or its assignee intends to sublicense directly or indirectly certain rights provided by this Agreement to Crown (the "**Crown Sub-License**");

WHEREAS, for United States federal income tax purposes, Marcas Modelo and Constellation Beers intend to treat the execution of this Agreement together with the Crown Sub-License as a sale by Marcas Modelo of its rights and responsibilities under the Original Agreement, together with such other rights and responsibilities as are further described in this Agreement, to Constellation Beers in exchange for all or a portion of the payments provided for in that certain Brewery SPA, dated as of February __, 2013, by and between ABI and Constellation; and

WHEREAS, it is the intent of the parties that Constellation Beers shall have the right to make, and have made Importer Products (as defined below), pursuant to the terms of this Agreement and Marcas Modelo agrees to grant Constellation Beers the rights set forth herein with respect thereto.

NOW, THEREFORE, in consideration of the payment as provided for in that certain Brewery SPA, dated as of February __, 2013, by and between ABI and Constellation, and those covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.1 For purposes of this Agreement, the following terms have the meanings set forth below:

"**ABI**" has the meaning assigned to that term in the Recitals.

"**Abandoned Trademarks**" means those trademarks evidenced by the trademark applications and registrations described in **Exhibit A** to this Agreement.

"**Additional Trademarks**" means those trademarks evidenced by the trademark applications and registrations described in **Exhibit B** to this Agreement, as such Exhibit may be amended or supplemented from time to time in accordance with this Agreement.

"**Affiliate**" of any Person means any other Person which, directly or indirectly, controls or is controlled by that Person, or is under common control with that Person. For purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning assigned to that term in the Preamble.

"**Bankruptcy Code**" has the meaning assigned to that term in **Section 9.11**.

"**Barton**" has the meaning assigned to that term in the Recitals.

"**Beach Holdings**" has the meaning assigned to that term in the Recitals.

"**Beer**" means beer, ale, porter, stout, malt beverages, and any other versions or combinations of the foregoing, including non-alcoholic versions of any of the foregoing.

"**Bottle Designs**" means the shape and designs of bottles that bear any Trademark or constitute Trade Dress.

"**Brand Extension Beer**" means Beer packaged in Containers bearing a Brand Extension Mark.

"**Brand Extension Mark**" means a Mark that is a derivative of one or more of the Trademarks for use in the marketing, merchandising, promotion, advertisement (including sponsorship activities in connection with the foregoing), licensing, distribution and sale of Mexican-style Beer.

"**Brand Guidelines**" means the applicable Brand Guidelines for an Interim Product or Importer Product as attached hereto as **Exhibit C**.

"**Brewery SPA**" has the meaning assigned to that term in the Recitals.

"**Brewing Territory**" means Mexico; provided, however, if at any time after the date of this Agreement (a) Modelo Group manufacturers or has manufactured on its behalf any Product outside of Mexico (other than as a result of a Force Majeure Event, and in that case, only to the extent of, and for the duration of, such Force Majeure Event), the "Brewing Territory" with respect to such Product shall automatically be deemed to be worldwide (including, for clarity, for purposes of brewing using a high gravity process); and (b) upon occurrence of a Force Majeure Event adversely affecting the capacity of the brewing facilities of Constellation or its Affiliates in Mexico to meet demand for Products, then, for the duration of such Force Majeure Event, the Brewing Territory with respect to Beer produced at such facility shall be worldwide (including, for clarity, for purposes of brewing using a high gravity process).

"**Business Day**" means any day, other than Saturday, Sunday or a day on which banking institutions in New York, New York, Chicago, Illinois, or Mexico City, Mexico are authorized or obligated by law to close.

"**Chelada Trademarks**" means those Trademarks evidenced by the trademark registrations and applications described in **Exhibit E** to this Agreement.

"**Confidential Information**" means all information and materials regarding the business of either party that are identified in writing by the party to be confidential information or which a party should reasonably believe to be confidential information of a party, including business plans, formulas, know-how, Yeast, financial information, historical financial statements, financial projections and budgets, historical and projected sales, pricing strategies and other pricing information, marketing plans, research and consumer insights, capital spending budgets and plans, the names and backgrounds of key personnel, personnel policies, plans, training techniques and materials, organizational strategies and plans, employment or consulting agreement information, customer agreements and information (including for distributors or retailers), names and terms of arrangements with vendors or suppliers, or other similar information, all of which includes all non-public data, information and materials delivered to

Marcas Modelo or Grupo Modelo pursuant to the inspection rights set forth herein, including **Sections 3.6, 3.7** and **3.8**, whether or not marked as or otherwise reasonably believed to be confidential. Inadvertent failure to identify information as confidential, may be corrected by the producing person by written notice to the other party, and once confidential information has been identified as Confidential Information by a party, failure to do so in all communications containing that information shall not cause the information to be treated in a non-confidential manner. "**Confidential Information**" does not include, however, information which (a) is or becomes generally available to the public other than as a result of a breach by the receiving party or its Affiliates of its obligations of confidentiality and non-use set forth herein, (b) was available to the receiving party or its Affiliates on a non-confidential basis prior to its disclosure by the disclosing party, or (c) becomes available to the receiving party on a non-confidential basis from a person other than Constellation Beers or any of its Affiliates.

"**Confidentiality Agreement**" has the meaning assigned to that term in **Section 9.6**.

"**confusingly similar**" (or "**likely to cause confusion**") means, with respect to any use of a Mark or elements of trade dress that are protectable under applicable law, that such use would be determined to give rise to a likelihood of confusion pursuant to federal trademark law as interpreted and applied in the federal courts in the State of New York.

"**Constellation**" has the meaning assigned to that term in the Recitals.

"**Constellation Beers**" shall have the meaning assigned to that term in the Preamble, and shall include any assign of Constellation Beers permitted under **Section 9.1** of this Agreement.

"**Constellation Beers Indemnitees**" has the meaning assigned to that term in **Section 5.2**.

"**Container**" means the bottle, can, keg or similar receptacle in which the Beer is directly placed.

"**Crown**" has the meaning assigned to that term in the Preamble.

"**Crown Sub-License**" has the meaning assigned to that term in the Recitals.

"**Crown Trademarks**" means those Trademarks evidenced by the following trademark registration numbers 3,584,879 (Crown Imports) and 3,581,601 (Crown Imports and Design).

"**Damages**" has the meaning assigned to that term in **Section 5.1**.

"**Disagreement Notice**" has the meaning assigned to that term in **Section 3.10(b)**.

"**Eligible Supplier**" means a Person, other than Constellation Beers and Grupo Modelo, that is capable of manufacturing Importer Products in a manner that meets or exceeds the Quality Standards.

"**Extrade II**" has the meaning assigned to that term in the Recitals.

"**Force Majeure Event**" means events or circumstances beyond the reasonable control of a party that significantly interfere with such party's ability to manufacture Product at any brewing facility or deliver the Products to the Territory such as such events or circumstances arising from acts of God, strikes, lockouts or industrial disputes or disturbances, changes in law or governmental regulations, any taking or pending taking in condemnation or under the right of eminent domain or similar right, acts of civil or military authorities, civil disturbances, arrests or restraint from rulers or people, wars, acts of terrorism, riots, blockades, insurrections, epidemics, blights, plagues, landslides, lightning, earthquakes, fire, storm, weather, floods, washouts, explosions, strikes, the inability to obtain raw materials, the malfunction or breakdown of any machinery or equipment, the failure or malfunction of any utilities, telecommunications systems or common carriers, any labor, material or fuel shortages, or other physical supply or distribution constraints.

"**Foreign Bankruptcy Law**" has the meaning assigned to that term in **Section 9.11**.

"**Grupo Modelo**" means Grupo Modelo, S.A.B. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico, and its Subsidiaries, or any of them.

"**Importer Product**" means Product or Brand Extension Beer produced in the Brewing Territory by Constellation Beers or on behalf of Constellation Beers or an Affiliate of Constellation Beers by a Supplier pursuant to a Supply Agreement, in each case, solely for import, distribution and sale, including resale, by Constellation Beers in the Territory.

"**Interim Product**" means Product supplied to Constellation Beers pursuant to the Interim Supply Agreement.

"**Interim Supply Agreement**" means that certain Interim Supply Agreement dated as of [•] by and between Grupo Modelo, S.A.B de C.V., and Crown.

"**law**", unless otherwise expressly stated in this Agreement, includes statutes, regulations, decrees, ordinances and other governmental requirements, whether federal, state, local or of other authority.

"**Liability Insurance**" has the meaning assigned to that term in **Section 5.3**.

"**Licensed Copyrights**" means all copyrights owned by either Constellation Beers or its Affiliates or Grupo Modelo, in each case, in and to Marketing Materials and Secondary Marketing Materials, as applicable.

"**Licensed Intellectual Property**" means the Licensed Copyrights, Licensed Other IP, Licensed Patents and the Trademarks.

"**Licensed Other IP**" means any of the following rights, including intellectual property rights, that are owned or controlled by Grupo Modelo existing as of the date of this Agreement or required to be provided pursuant to this Agreement with respect to Interim Products or Importer Products: (a) the Recipes, (b) the trade secrets and know-how (including methods and processes), that are used for formulating, manufacturing, producing and packaging Products including any such rights in and to Yeast, (c) protectable elements of the Trade Dress, and (d) the mold designs

that may be protectable that are used in the manufacturing process of Containers for the Products for import, distribution and sale in the Territory.

"**Licensed Patents**" means all patents and any pending patent applications, if any, that are (a) owned as of the date of this Agreement by Grupo Modelo entities that are engaged in brewing, bottling or packaging of Products for distribution in the Territory (including divisions, continuations, continuations-in-part, extensions and reissues claiming priority to any of the foregoing patents or patent applications), and (b) practiced as of the date of this Agreement by Grupo Modelo in the formulation, manufacture, production or packaging of Products for distribution in the Territory.

"**Marcas Modelo**" has the meaning assigned to that term in the Preamble.

"**Marketing Materials**" means sales collateral, promotional materials, advertisements, slogans, taglines, developed by either Constellation Beers or its Affiliates or Grupo Modelo, whether or not works of authorship, registered or unregistered, used in conjunction with the advertising, promotion and marketing of Products in the Territory, provided, however, that "Secondary Marketing Materials" are not included therein.

"**Marks**" means any and all trademarks, service marks, trade names, taglines, company names, and logos, including unregistered and common-law rights in the foregoing, and rights under registrations of and applications to register the foregoing.

"**Membership Interest Purchase Agreement**" has the meaning assigned to that term in the Recitals.

"**Mexican-style Beer**" means any Beer bearing the Trademarks that does not bear any trademarks, trade names or trade dress that would reasonably be interpreted to imply to consumers in the Territory an origin other than Mexico.

"**Modelo Group**" means Grupo Modelo and all Persons that, now or in the future, are related to Grupo Modelo by virtue of Grupo Modelo's direct or indirect share ownership in such Person, and any Affiliates thereof, and ABI, Anheuser-Busch Companies, LLC, Anheuser-Busch International, Inc., Anheuser-Busch International Holdings, LLC, and any of their respective Affiliates.

"**Modelo Indemnitees**" has the meaning assigned to that term in **Section 5.1**.

"**Non-Exclusive Trademarks**" means those Trademarks evidenced by the trademark registrations and applications described in **Exhibit F** to this Agreement.

"**Original Agreement**" has the meaning assigned to that term in the Preamble.

"**Packaging**" means cases, cartons or the like into which Containers may be placed, or other packaging into which such cases, cartons or the like themselves may be placed for transport, shipping or display, or delivery to consumers.

"**Parent Product**" means a Product bearing a Parent Trademark.

"**Parent Trademark**" means a Trademark from which a Brand Extension Mark is derived.

"**Permitted Corporate Reference**" has the meaning assigned to that term in **Section 2.5(b)**.

"**Person**" means any individual, corporation, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, a company with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal representative, regulatory body or agency, government or governmental agency, authority or entity, however designated or constituted.

"**Product**" means Beer packaged in Containers bearing one or more of the Trademarks.

"**Qualified Brewmaster**" means a brewmaster that is independent and impartial and recognized in the Beer brewing industry for his or her expertise relating to the subject matter at issue.

"**Quality Default**" means either (a) a defect in a Product or Packaging, or (b) a deviation from the intended recipe and taste formula or Technical Specifications for any Product which causes an adverse change in intended taste, consistency or mouth feel of the Product, in each case, that would reasonably be perceptible by a consumer.

"**Quality Default Cure Failure**" has the meaning assigned to that term in **Section 3.10(a)**.

"**Quality Default Cure Failure Notice**" has the meaning assigned to that term in **Section 3.10(a)**.

"**Quality Default Notice**" has the meaning assigned to that term in **Section 3.10(a)**.

"**Quality Standards**" with respect to the Beer, means that such Beer is consistently produced pursuant to the Recipe and Technical Specifications for such Product without a Quality Default; provided, however, that in all cases the Product, including physical and sensory characteristics of such Product, shall be merchantable, meet any applicable regulatory standards, and shall be free from microbiological defects and defects in aroma, flavor or appearance, such that such Importer Product would not be deemed to be defective by a Qualified Brewmaster. With respect to Containers, "**Quality Standards**" means that they are merchantable, meet any applicable regulatory standards, and are sufficient to contain, ship and store Product for the requisite planned period as set out in **Section 3.3**.

"**Recipe**" means the description and measure of ingredients, raw materials, yeast cultures, formulas, brewing processes, equipment, and other information that is reasonably necessary for a brewmaster to produce a particular Beer and includes any Recipe for a Product existing as of the date hereof and any Recipe delivered by either party to the other party under this Agreement, or otherwise used or developed in compliance with this Agreement, after the date hereof, including any change to a Recipe permitted pursuant to the terms of this Agreement.

"**representatives**" means, with respect to Marcas Modelo, any employee or agent of Marcas Modelo, but excluding any employee or agent involved in the marketing, sale, production or pricing of Beer in the Territory for the Modelo Group.

"**Secondary Marketing Materials**" means images, photography, displays, slogans, taglines which do not employ the Trademarks or the Trade Dress; for clarity, event promotional materials, colors of displays and the like shall be considered "Secondary Marketing Materials."

"**Subsidiary**" means, with respect to any Person, a corporation, partnership, joint venture, limited liability company, trust, estate or other Person of which (or in which), directly or indirectly, more than fifty percent (50%) of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors, managers or others performing similar functions of such entity (irrespective of whether at the time capital stock of any other class or classes of such entity shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such partnership, joint venture or limited liability company or other Person or (c) the beneficial interest in such trust or estate is at the time owned by such first Person, or by such first Person and one (1) or more of its other Subsidiaries or by one (1) or more of such Person's other Subsidiaries.

"**Supplier**" means an Eligible Supplier that has entered into a Supply Agreement with Constellation Beers.

"**Supply Agreement**" means an agreement that complies with the requirements set forth in this Agreement between Constellation Beers and an Eligible Supplier for such Eligible Supplier to manufacture, bottle or package Importer Products.

"**Technical Specifications**" means those technical specifications used by or on behalf of Marcas Modelo or any of its Affiliates with respect to the manufacture, bottling and packaging of Importer Products or Interim Products as may be amended from time to time as permitted in this Agreement. It shall not be considered a breach hereof if technical specifications and processes are changed to equivalent technical specifications and processes, so long as the resulting technical and chemical attributes of the Products resulting therefrom do not impair the finished product, as would be determined by a reasonable Qualified Brewmaster.

"**Territory**" means the fifty states of the United States of America, the District of Columbia and Guam.

"**Third Party**" means a Person other than Marcas Modelo and its Affiliates and other than Constellation Beers and its Affiliates.

"**Trade Dress**" means the print, style, font, color, graphics, labels, packaging and other elements of trade dress (including Bottle Designs or other Container designs) that are (a) used on or in connection with Products as of the date hereof (including the Bottle Designs as of the date hereof for Corona, Negra Modelo and Modelo Especial), or (b) permitted pursuant to this Agreement after the date hereof to be used in connection with the marketing, merchandising, promotion, advertisement, licensing, distribution and sale of Products in the Territory.

"**Trademarks**" means those trademarks evidenced by the trademark applications and registrations described in either **Exhibit B** or in **Exhibit D** to this Agreement, as such Exhibits may be amended or supplemented from time to time in accordance with this Agreement.

"**Transition Period**" means (a) for Packaging, a period not to exceed eighteen (18) months after the date of this Agreement, and (b) for Containers, a period not to exceed twelve (12) months after the date of this Agreement.

"**USPTO**" means the United States Patent and Trademark Office.

"**West Coast Importer Agreement**" means the importer agreement, dated as of November 22, 1996, by and between Barton and Extrade, S.A. de C.V., as amended.

"**Yeast**" means yeast that complies with the Recipes for (a) any Product existing as of the date hereof or (b) any Brand Extension Beer marketed by (i) Marcas Modelo or Grupo Modelo in Mexico or Canada or (ii) Constellation Beers or any of its Affiliates in the Territory, in each of clauses (i) and (ii), following the date of this Agreement.

1.2 Construction

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article," "Section," "Schedule" or "Exhibit" refer to the specified Article, Section, Schedule or Exhibit of this Agreement, unless otherwise specifically stated; (v) the words "include" or "including" shall mean "include, without limitation" or "including, without limitation;" and (vi) the word "or" shall be disjunctive but not exclusive.

(b) Unless the context otherwise requires, references to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto.

(c) Unless the context otherwise requires, references to statutes shall include all regulations promulgated thereunder and, except to the extent specifically provided below, references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(d) The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. This Agreement is the joint drafting product of the parties hereto and each provision has been subject to negotiation and agreement and shall not be construed for or against any party as drafter thereof.

(e) All amounts in this Agreement are stated and shall be paid in United States dollars.

ARTICLE II
GRANT OF LICENSE; INTELLECTUAL PROPERTY; SUPPLY

2.1 **Licenses**.

(a) ***Trademarks***. Subject to the terms and conditions of this Agreement, Marcas Modelo hereby grants, on behalf of itself and Grupo Modelo, to Constellation Beers an irrevocable, exclusive, fully paid-up, sub-license to use the Trademarks solely in connection with: (i) importing, advertising, promoting, marketing and selling Importer Products and Interim Products in the Territory; (ii) the application of the Trademarks to Importer Product in the course of manufacturing, bottling and packaging of Importer Products in the applicable Brewing Territory (which foregoing rights with respect to manufacturing, bottling and packaging are, for clarity, non-exclusive) solely for importation, distribution and sale, including resale, of such Importer Products by Constellation Beers in the Territory (which foregoing rights with respect to importation, distribution and sale in the Territory are exclusive); (iii) distributing in the Territory collateral sales and promotional materials for Importer Products and Interim Products in the Territory; and (iv) distributing in the Territory other items to be marketed and sold or provided without charge to consumers in conjunction with the advertising, promotion and marketing of Importer Products and Interim Products in the Territory. Any use of the Trademarks shall be subject to the provisions of **Section 2.4** of this Agreement. Marcas Modelo represents and warrants to Constellation Beers that Marcas Modelo has full authority and right to grant the sub-licenses to Constellation Beers as set forth in this Agreement. For the purposes of this Agreement, it is understood that the use by Constellation Beers of the Trademarks in connection with advertising and promotional material as authorized under this **Section 2.1** that may be accessible to Persons residing outside the Territory, (such as the use in a Uniform Resource Locator (URL), domain or similar future electronic address or on an internet site or in a periodical that may have some distribution outside the Territory or use with respect to any Facebook® page, Twitter® account, Pinterest® account or similar social media, telephone numbers, or other means of directing marketing or sales of Product in the Territory which may contain the Trademarks, whether such means are now known or developed in the future), shall not be a violation of this Agreement provided that: (a) the media chosen is not primarily directed to Persons residing outside the Territory or chosen with the intent of communicating with Persons residing outside the Territory as in the case of a website with an address indicating a source in a foreign country (e.g. .ca) or a periodical that is primarily distributed to Persons outside the Territory; and (b) Constellation Beers is in compliance with **Section 2.12(f)** below. Notwithstanding anything set forth in this Agreement, Constellation Beers shall have the right to use in the Territory or Brewing Territory the name "Crown" and the Crown Trademarks as its corporate or trade name for the purposes of identifying itself in print (or any other visually perceptible medium) in each case accompanied by an appropriate corporate identifier such as "Crown Imports LLC" (which use in association with products must also include a designation of the product as having been "bottled by", "produced by", "hecho", or "imported by" or the like by such company), as required by law or regulation, or for purposes of government filings, corporate annual reports and other uses that would constitute "fair use" under applicable trademark law, provided, however, in each case, that Constellation Beers shall not, and shall cause its Affiliates not to, use the word "Crown" or the Crown Trademarks in any form or combination as a product brand name for a Beer.

(b) ***Licensed Other IP.*** Subject to the terms and conditions of this Agreement, Marcas Modelo hereby grants, on behalf of itself and Grupo Modelo, to Constellation Beers an irrevocable, fully paid-up sub-license to use the Licensed Other IP solely in connection with (i) importing, advertising, promoting, marketing and selling Importer Products and Interim Products in the Territory; (ii) manufacturing, bottling and packaging of Importer Products in the applicable Brewing Territory, solely for distribution and sale, including resale, of such Importer Products by Constellation Beers in the Territory; (iii) distributing in the Territory collateral sales and promotional materials for promotion of Importer Products and Interim Products for sale in the Territory; and (iv) distributing in the Territory other items to be marketed and sold or provided without charge to consumers in conjunction with the advertising, promotion and marketing of Importer Products and Interim Products in the Territory. The license rights granted in clause **(ii)** of this **Section 2.1(b)** shall be non-exclusive and the license granted in clauses **(i)**, **(iii)**, and **(iv)** of this **Section 2.1(b)** shall, subject to **Sections 2.5(a)** and **2.5(b)**, be exclusive solely in the Territory.

(c) ***Licensed Patents.*** Subject to the terms and conditions of this Agreement, Marcas Modelo hereby grants, on behalf of itself and Grupo Modelo, to Constellation Beers an irrevocable, fully paid-up license or sub-license (as applicable) under the Licensed Patents (i) to make, have made (by Suppliers in accordance with this Agreement) and use Importer Products in the applicable Brewing Territory, and (ii) to sell (directly and/or indirectly), offer to sell, import and otherwise dispose of Interim Products and Importer Products in the Territory. The license rights granted in clause **(i)** of this **Section 2.1(c)** shall be non-exclusive and the license granted in clause **(ii)** of this **Section 2.1(c)** shall be exclusive solely in the Territory.

(d) ***Licensed Copyrights.***

(i) Subject to the terms and conditions of this Agreement, Marcas Modelo hereby grants, on behalf of itself and Grupo Modelo, to Constellation Beers an irrevocable, exclusive, fully paid-up license or sub-license (as applicable) under the Licensed Copyrights owned by Grupo Modelo in the Territory to copy, modify, create derivative works of, publicly display and distribute Marketing Materials or Secondary Marketing Materials existing at the time of entering into this Agreement to the extent that they may have been transferred by or on behalf of Crown to Grupo Modelo under the Original Agreement, in each case solely in connection with the marketing, promotion and sale of Importer Products and Interim Product in the Territory.

(ii) Subject to the terms and conditions of this Agreement, Constellation Beers hereby grants to Marcas Modelo and its Affiliates an irrevocable, exclusive, fully paid-up license or sub-license (as applicable) under the Licensed Copyrights owned by Constellation Beers or its Affiliates outside of the Territory to copy, modify, create derivative works of, publicly display and distribute Marketing Materials and Secondary Marketing Materials existing as of the date of this Agreement, in each case solely in connection with the marketing, promotion and sale of Products outside of the Territory.

(e) ***Constellation Use of "Modelo".*** Constellation Beers shall have the right to use the term "Cerveceria Modelo" or any derivation thereof (i) in the Territory as such term is included in the Trademarks or Trade Dress as currently existing (or to substitute for uses of "Grupo Modelo" in the Trademarks and Trade Dress currently used in the Products), (ii) for the

purposes of identifying in print (or any other visually perceptible medium) that Importer Products marketed and sold in the Territory have been "bottled by", "produced by", "made by", "hecho", "imported by" of the like by "Cerveceria Modelo, and (iii) as the fictitious name or "d/b/a" for its brewery located in Mexico, in each case, (1) only in connection with the exercise of the licenses granted in this Section 2.1, and (2) provided that such use is not likely to cause confusion with the uses described in **Section 2.5(b)**. Marcas Modelo will reasonably cooperate at the cost of Constellation Beers in reasonable requests of Constellation Beers to establish the rights identified in the foregoing clauses (i) through (iii) of this Section 2.1(e). All rights set forth in this Section 2.1(e) are provided on an "AS IS" basis without any warranty of any kind, express or implied, including as to the sufficiency of rights or the compliance of any exercise of such rights with applicable laws. Constellation will use reasonable efforts to wind-down all uses of the term "Grupo Modelo" or "Modelo Group" as soon as reasonably practicable after the date of this Agreement and shall ceases all such uses in connection with any Beer products marketed or sold in the Territory within the Transition Period. Nothing in this Agreement shall prevent Constellation Beers from using "Cerveza Modelo" or derivatives thereof in the promotion or sale of Importer Products in the Territory. Constellation Beers shall have the right to use "Cerveza Modelo" or any derivation thereof. Notwithstanding the foregoing, and except during the Transition Period, the name "Cerveceria Modelo" or "Cerveceria del Pacifico" will be used only as a trade name and not with any foreign corporate identifier such as "S.A. de C.V. – Mexico" or "S.A" or other such identifier that may be likely to cause confusion with the brewery entity owned by Grupo Modelo.

(f) ***Chelada Trademarks***. Notwithstanding **Section 2.1(a)**, Constellation Beers acknowledges and agrees that it is in the mutual interests of the parties to avoid the potential for consumer confusion arising from the use of similar Marks, and absent any change, there may be a potential for confusion with respect to the Chelada Trademarks and certain existing Marks of the Modelo Group. Accordingly, Constellation Beers agrees that it will as soon as reasonably practicable after the date of this Agreement, but in any case within the Transition Period, cease all use of the Chelada Trademarks in their existing form including on labels and other Containers for Products, provided that, Constellation Beers may adopt or use Trademarks evidenced in the Chelada Trademarks that do not contain a depiction of the glass in the background of those Trademarks, and at the discretion of Constellation Beers, it may file and maintain applications for such registrations so modified subject to the terms and conditions of Section 2.8.

(g) ***Non-Exclusive Trademarks***. Notwithstanding **Section 2.1(a)**, the rights of Constellation Beers under **Section 2.1(a)** shall be deemed to be non-exclusive right respect to the Non-Exclusive Trademarks, and Marcas Modelo shall retain the right to use and sublicense the Non-Exclusive Trademarks or otherwise refer to the terms "Familiar", "Cinco" or "Cinco De Mayo" or similar terms for any purpose including in connection with the marketing, promotion, distribution and sale of Beer in the Territory.

(h) ***Materials***. For avoidance of doubt, Constellation Beers shall have the right to purchase raw materials, including recipe ingredients and Containers, anywhere in the world so long as they comply with the Quality Standards; provided, that the actual brewing and bottling of Importer Product shall take place in the applicable Brewing Territory in accordance with the terms and conditions of this Agreement.

(i) ***Certain Trade Names***. In connection with the exclusive license granted in **Section 2.1(a)** above, Marcas Modelo and any other member of the Modelo Group shall not use in the Territory any Trademark as a corporate or trade name in connection with the importation, sale, distribution or marketing of Beer in the Territory, except as permitted in **Section 2.5(b)** below, and, further, Marcas Modelo or any of its Affiliates may not use any Abandoned Trademark on any Beer marketed or sold in the Territory in a manner which is likely to cause confusion.

2.2 ***Changes to Recipes***.

(a) Should Marcas Modelo or Grupo Modelo (i) use any Recipe for any Brand Extension Beer marketed by Marcas Modelo or Grupo Modelo in Mexico or Canada after the Effective Date or (ii) make any reasonably perceptible change to any Recipe for any Product or any such Brand Extension Beer marketed in Mexico or Canada, Marcas Modelo will notify Constellation Beers that such new Recipe is being used or that such change has been made (as applicable) and, at the request of Constellation Beers, Constellation Beers may (but shall not be obligated to) adopt such new or changed Recipe and, if Constellation Beers so elects, the new or changed Recipe and the Licensed Other IP with respect to such Recipe will be added to the licenses granted in **Section 2.1** of this Agreement, at no additional cost or charge to Constellation Beers.

(b) Constellation Beers shall have the right to determine in its sole discretion any changes to the Beer Recipe it uses for each existing Product, which changes may be variations or derivatives of Recipes of such existing Products or entirely new Recipes, provided that such changed Recipes meet the Quality Standards. Should Constellation Beers or any of its Affiliates (i) use any Recipe for any Brand Extension Beer marketed by Constellation Beers or any of its Affiliates in the Territory after the Effective Date, or (ii) make any reasonably perceptible change to any Recipe for any Product or any such Brand Extension Beer marketed in the Territory, Constellation Beers will notify Marcas Modelo that such new Recipe is being used or that such change has been made (as applicable) and, at the request of Marcas Modelo, Marcas Modelo may (but shall not be obligated to) adopt such new or changed Recipe and, if Marcas Modelo so elects, the new or changed Recipe and the Licensed Other IP with respect to such Recipe will be deemed to be licensed by Constellation Beers to Grupo Modelo on the same terms as the grants to Constellation Beers under **Section 2.1**, provided that the territory for such license shall be for production worldwide and solely for distribution of product outside of the Territory.

2.3 ***Amendment of Trademark Exhibits***. **Exhibit B** and **Exhibit D** shall be amended to reflect any Marks (including Brand Extension Marks) added to or removed from or deemed to be added to or removed from **Exhibit B** or **Exhibit D** pursuant to the terms of this Agreement (including the addition of Trademarks in accordance with **Section 2.8(b)**, the removal of Trademarks in accordance with **Section 2.8(c)**, and the removal of Trademarks associated with brands abandoned by Constellation Beers as set forth in **Section 2.14)**.

2.4 ***Acceptable Trademark Use***.

(a) *Form of Trademarks*. Constellation Beers may not use or allow the use of any of the Trademarks, including use on labels, packaging, promotional materials, displays and in

advertising and promotion, except in a form, color, style and appearance reasonably consistent with the applicable Brand Guidelines.

(b) *Prior Use.* Subject to **Section 2.4(a)**, for purposes of this Agreement, (i) any materials supplied by or on behalf of Marcas Modelo to Constellation Beers bearing any of the Trademarks for use in connection with the performance of this Agreement and Importer Agreement or the Original Agreement, (ii) any materials previously used by Crown or Barton with the knowledge of Grupo Modelo, including pursuant to the West Coast Importer Agreement, the Modelo Sub-license Agreement, and/or the Pacifico Sub-license Agreement by and between Procermex, Inc. and Barton dated November 22, 1996, and (iii) any materials previously used by Crown with the knowledge of Grupo Modelo pursuant to the Original Agreement and Importer Agreement, shall be deemed to comply with the terms and conditions of this Agreement for ordinary use in the performance of this Agreement.

2.5 ***Retained Rights and Obligations of Marcas Modelo.***

(a) Notwithstanding **Section 2.1**, Marcas Modelo may use and may grant sub-licenses to use the Trademarks in the Territory in connection with (i) existing sponsorship activities, including any promotion, marketing or advertising of the Importer Products and Interim Products in the Territory that Marcas Modelo or its Affiliates is required to conduct pursuant to an agreement with a Third Party in effect on the date hereof until such agreement is terminated or expires in accordance with its terms, (ii) global sponsorship and worldwide promotional activities, including any internet-based or social media promotion, marketing or advertising of the Importer Products and Interim Products, as long as such activities are not primarily directed to Persons in the Territory, even if such activities involve advertising and other similar content that may be located in the Territory or accessible to Persons residing in the Territory, (iii) distributing or otherwise providing promotional materials or merchandise with charge or merchandise in the Territory solely in connection with the activities described in clauses **(i)** and **(ii)** of **Section 2.5(a)** above or in connection with contractual commitments of Grupo Modelo existing as of the date of this Agreement, provided that such contractual commitments are not voluntarily renewed by Grupo Modelo and Marcas Modelo uses commercially reasonable efforts to wind-down and terminate such commitments without incurring liabilities or breaching any obligation, and (iv) of government filings, corporate annual reports, printed historical references and other print uses that would constitute "fair use" under applicable trademark law.

(b) Notwithstanding anything set forth in this Agreement, Marcas Modelo and Grupo Modelo shall have the right to use inside the Territory (i) "Cerveceria Modelo", or (ii) a corporate name including "Grupo Modelo", and which in each case is accompanied by an appropriate corporate identifier, such as "Grupo Modelo S.A.de C.V.", (collectively, "**Permitted Corporate Reference**") for the purposes of identifying themselves in print (or any other visually perceptible medium) (which use in association with products or promotion of products must also include a designation of the product as having been "bottled by", "produced by", "made by", "hecho","imported by" or the like by such company or brewery), so long as such Permitted Corporate Reference is not displayed on a consumer-facing label of a Container or primary consumer directed panel of Packaging unless required to comply with applicable laws in the Territory, or in a manner likely to cause confusion with respect to the Trademarks.

(c) Notwithstanding anything set forth in this Agreement, Marcas Modelo or Modelo Group may use the Permitted Corporate Reference, Trademarks or Trade Dress for purposes of government filings, corporate annual reports, printed historical references and other uses that would constitute "fair use" under applicable trademark law.

(d) Under no circumstances may "Modelo" be used by Marcas Modelo or any of its Affiliates in any form or combination as a product brand name for marketing, promotion or sale of Beer in Territory. Notwithstanding anything set forth in this Agreement, Marcas Modelo and its Affiliates may use any Internet domain name (or other, similar or successor electronic address) or social media (including Facebook® page, Twitter® account, Pinterest® account or the like) containing any of their corporate or trade names or respective Marks, including the Trademarks; provided that: (a) the media chosen is not primarily directed to Persons residing in the Territory or chosen with the intent of communicating with Persons residing in the Territory or a periodical that is primarily distributed to Persons in the Territory; and (b) Marcas Modelo or Grupo Modelo are in compliance with **Section 2.5(f)** below. Marcas Modelo and Constellation Beers shall reasonably cooperate to determine and agree upon in good faith appropriate and commercially reasonable policies and procedures for referring to the other party visitors to their respective websites or social media outlets that indicate an interest in the Products in the territory of the other party with the understanding that (i) online content directed to the marketing or sale of Importer Products to consumers in the Territory would be under the direction of Constellation Beers and (ii) online content directed to the marketing or sale of Products to consumers outside of the Territory would under the direction of Marcas Modelo. Constellation Beers obtains no right, title, or interest in or to any Marks hereunder other than the Trademarks, and all rights not granted to Constellation Beers hereunder are hereby expressly reserved. Nothing herein shall preclude Marcas Modelo or any member of the Modelo Group from (A) using any of their respective Marks, other than the Trademarks, for any purpose or (B) registering or displaying their respective Marks, in each case, other than the Trademarks, in any territory in the world, including the Territory.

(e) Marcas Modelo shall, and shall cause Grupo Modelo to, deliver to Constellation Beers copies of tangible embodiments of the Licensed Other IP used as of the date of this Agreement, or as required pursuant to **Section 2.2** hereof, by Marcas Modelo or its Subsidiaries in brewing Product, as reasonably necessary for Constellation Beers to exercise its rights under clause **(ii)** of **Section 2.1(b)**. Constellation Beers shall, and shall cause its applicable Affiliates to, deliver to Marcas Modelo copies of tangible embodiments of the Recipes as required pursuant to **Section 2.2** hereof as reasonably necessary for Marcas Modelo to exercise its rights under **Section 2.2(b)**.

(f) Marcas Modelo shall not, and shall not permit any member of the Modelo Group to, sell any Products to any buyers located in the Territory, and shall, and shall cause all members of the Modelo Group, to use commercially reasonable efforts to prevent buyers from reselling such Products in the Territory or in any manner not authorized by this Agreement (including by not selling to exporters or buyers who are known, or would reasonably be expected, to resell inside of the Territory); for clarity, it shall not be a breach of this Agreement to sell or distribute to cruise lines, airlines, tour operators and the like located outside of the Territory, so long as the Products are delivered outside of the Territory.

(g) Without limiting any rights of the parties at law or in equity, Marcas Modelo shall not, and shall not permit any member of the Modelo Group to, use any Mark in the marketing or promotion of Beer in the Territory that is confusingly similar with any Trademark (other than any Additional Trademark) or protectable elements of Trade Dress (including the protectable Bottle Designs as of the date hereof for Corona, Negra Modelo and Modelo Especial) in each case existing as of the date of this Agreement. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit any rights of Anheuser-Busch Companies, LLC, or any of its Affiliates operating in the Territory (other than Grupo Modelo) to use, register or adopt any Mark or trade dress used on or before the date of this Agreement in connection with the marketing, promotion or distribution of Beer in the Territory, or the right of any such entities to challenge, oppose or assert likelihood of confusion against any Trademark or Trade Dress on the basis of any Mark owned by or activity of such entities; provided, however, that as to Trademarks and Trade Dress of the Products in each case licensed under this Agreement as of the date of this Agreement, (i) neither Anheuser-Busch Companies, LLC nor any their respective Affiliates shall challenge, oppose or assert likelihood of confusion with respect to existing uses of such Trademarks and Trade Dress, and (ii) neither Constellation Beers nor any of its Affiliates shall challenge, oppose or assert likelihood of confusion on the basis of such Trademarks and Trade Dress against any existing Marks or trade dress of Anheuser-Busch Companies, LLC or any their respective Affiliates. For clarity, nothing herein shall be construed to prohibit Constellation Beers from bringing in accordance with **Section 2.9** an action at law or in equity for infringement under federal trademark law with respect to any Additional Trademark.

(h) For clarity, neither the supply by Marcas Modelo or its Affiliates of Products pursuant to the Interim Supply Agreement nor the performance of any written agreement by and between a member of the Modelo Group and Crown existing as of the Effective Date regarding the wholesale distribution of Product in the Territory will be deemed to be a breach or violation of the terms of this Agreement.

2.6 ***Sub-Licenses of Constellation Beers.***

(a) *Generally.* Constellation Beers may grant to its wholesalers, distributors, promotional agents, vendors, Affiliates, and Suppliers limited sub-licenses of any or all its rights in **Section 2.1**, in each case only as reasonably necessary for each such sub-licensee to engage in the activity for which it was engaged by Constellation Beers and solely within the rights authorized by this Agreement. The agreement Constellation Beers routinely uses for any such sub-license of rights shall provide reasonable provisions for the use, protection and maintenance of the Licensed Intellectual Property in a manner that is consistent with this Agreement, and shall prohibit any further sub-licenses of the Licensed Intellectual Property, and Constellation Beers shall use commercially reasonable efforts to enforce such agreements. Under no circumstances may any such sub-licensee use the Licensed Other IP or Licensed Patents to manufacture, bottle or package any products for its own account or for anyone other than Constellation Beers, except that where such sub-licensee is an Affiliate of Constellation Beers, such sub-licensee shall be deemed to be Constellation Beers for purposes of the requirement that Constellation Beers must manufacture, bottle or package Importer Products only for its own account. For purposes of clarification, Constellation Beers shall have the right to sub-license any or all of its rights under this Agreement (including the right to grant further sub-licenses) to any other Affiliate of Constellation, provided, that Constellation Beers notifies Marcas Modelo of any such sub-

licenses, such sub-licensee agrees in writing to be bound by all terms and conditions of this Agreement and the sublicensor remains liable for its sub-licensee's performance under this Agreement.

(b) *Sub-Licenses to Suppliers.* The right of Constellation Beers to grant sub-licenses to Suppliers or to any Affiliate with manufacturing rights or rights to grant sub-licenses to Suppliers under **Section 2.6(a)** is subject to and conditioned upon Constellation Beers' compliance with the terms and conditions of this **Section 2.6(b)**. Constellation Beers agrees to promptly notify Marcas Modelo of any such sub-licenses, the name of the Supplier or Affiliate (as applicable) and the location of its facilities if applicable. Any sub-license granted by Constellation Beers to a Supplier or Affiliate covered by this **Section 2.6(b)** shall permit Marcas Modelo sampling and inspection rights consistent with the terms of **Section 3.7** for the Importer Products produced by such Supplier. Constellation Beers shall remain liable to Marcas Modelo for the conduct of all of its Suppliers and Affiliates covered by this **Section 2.6(b)** that would constitute a breach of this Agreement if done by Constellation Beers, such conduct being deemed a breach hereof by Constellation Beers.

2.7 ***Limitations on Marcas Modelo.*** Marcas Modelo agrees that its exercise of its rights hereunder or otherwise obtained shall provide it with no right to approve the marketing, promotion, advertising used or manufacture by Constellation Beers for Interim Products and Importer Products. Notwithstanding the foregoing, Marcas Modelo shall be entitled to enforce its rights under this Agreement.

2.8 ***Maintenance of Trademarks and Licensed Other IP.***

(a) *Existing Registrations and Applications.* Marcas Modelo shall (i) pay or cause to be paid all maintenance fees, and take or cause to be taken such other reasonable administrative actions, in each case, necessary to maintain in force all the registrations in the Territory included in the Licensed Intellectual Property (except with respect to maintenance fees and administrative actions required to be taken by Constellation Beers pursuant to **Section 2.8(b)**), and (ii) diligently prosecute any applications for registration included in the Trademarks, Licensed Patents or with respect to the Licensed Other IP that are pending before the USPTO or other agency in the Territory as of the date hereof. Constellation Beers shall promptly reimburse Marcas Modelo for all reasonable out-of-pocket costs and expenses for the foregoing, including all maintenance and filing fees and reasonable attorneys' fees. If Marcas Modelo fails to perform its obligations under this **Section 2.8(a)**, Constellation Beers may take any such actions at its sole cost and expense, in which case Marcas Modelo will, and will cause any applicable member of the Modelo Group to, reasonably cooperate with Constellation Beers in such actions, at the expense of Constellation Beers. If requested by Constellation Beers, Marcas Modelo shall, and shall cause any applicable member of the Modelo Group to, designate Constellation Beers as its agent with respect to any of the foregoing maintenance obligations, including the payment of maintenance fees and filing of documents with the USPTO or other agency in the Territory.

(b) *New Registrations of Brand Extension Marks.* Upon the reasonable request of Constellation Beers, Marcas Modelo will file with the USPTO or other agency in the Territory applications to register any Marks that constitute Brand Extension Marks that can be so registered, or applications for additional registrations for any Brand Extension Marks, which

applications and registrations shall then be subject to **Section 2.8(a)**, and shall be deemed to be included in the Additional Trademarks. Constellation Beers shall be solely responsible for all reasonable costs and expenses associated with filing such applications, including all filing fees and reasonable attorneys' fees, and shall pay such costs directly to the providers or, if paid by Marcas Modelo, shall promptly reimburse Marcas Modelo for the same. If Marcas Modelo fails to perform its obligations under this **Section 2.8(b)**, or as otherwise approved by Marcas Modelo, Constellation Beers may, to the extent allowed under applicable law, file such applications in its own name and will promptly thereafter assign them to Marcas Modelo. Constellation Beers will pay all maintenance fees and take such other administrative actions necessary to maintain in force all the registrations in the Territory contemplated by this **Section 2.8(b)**. Marcas Modelo will, and will cause any applicable member of the Modelo Group to, reasonably cooperate with Constellation Beers in such actions, at the expense of Constellation Beers. If requested by Constellation Beers, Marcas Modelo shall, and shall cause any applicable member of the Modelo Group to, designate Constellation Beers as its agent with respect to any of the foregoing maintenance obligations, including the payment of maintenance fees and filing of documents with the USPTO or other agency in the Territory.

(c) *Status*. Marcas Modelo shall keep Constellation Beers reasonably apprised of the status of all applications and registrations included in Licensed Intellectual Property, and any significant actions with respect thereto, and shall invoice Constellation Beers on a quarterly basis for any costs and expenses required to be reimbursed by Constellation Beers pursuant to **Section 2.8(a)** or **2.8(b)**. Constellation Beers may provide written notice to Marcas Modelo that Constellation Beers no longer wishes to maintain a particular registration or application included in the Trademarks, in which case Constellation Beers' and Marcas Modelo's obligations under **Sections 2.8(a)** and **2.8(b)** will no longer apply to such registration or application, and **Exhibit B** or **Exhibit D** as applicable will automatically be deemed amended to remove such Trademarks. Notwithstanding the removal of any Trademark from **Exhibit B** or **Exhibit D**, neither Marcas Modelo nor any member of the Modelo Group shall be permitted to use such Trademark in the marketing or promotion of Beer in the Territory if such use would be reasonably likely to cause confusion as to the source of Beer marketed with another Trademark included in **Exhibit B** or **Exhibit D**.

2.9 ***Defending Trademarks***. Each party shall, consistently with the provisions of this Agreement, use its commercially reasonable efforts to protect the Trademarks, the Licensed Patents, Licensed Copyrights, and the Licensed Other IP in the Territory. Each party shall from time to time, as soon as reasonably possible after learning of the facts or law relating thereto, notify the other party of any federal, state, local or other filing (including any applications for, or renewals of, any trademarks or similar registrations) that Constellation Beers considers to be necessary, appropriate or advisable to protect the Trademarks, the Licensed Other IP, or other ownership rights with respect to the Products in the Territory. Furthermore, the parties will cooperate and consult in good faith to determine, on a case by case basis, the best means by which to address any infringement or suspected infringement of the Trademarks in the Territory; provided that Constellation Beers shall have the final right to make determinations of this nature, including commencing or defending litigation. If reasonably requested by Constellation Beers, or as may be required by a court or agency to permit Constellation Beers to pursue an action, Marcas Modelo shall, and shall cause any member of the Modelo Group to, join as a party to any such litigation if such joinder is necessary to prosecute Constellation Beers'

claims. In the event that Constellation Beers does not decide to pursue any act that Marcas Modelo deems to constitute infringement or suspected infringement of the Trademarks in the Territory, it shall give written notice to Marcas Modelo of the same and then Marcas Modelo may pursue such infringement or suspected infringement, at the expense of Marcas Modelo. Constellation Beers shall provide reasonable cooperation to Marcas Modelo in connection therewith. All damages, paid in settlement or otherwise, shall be distributed as follows, first, *pari passu*, to pay each of Constellation Beers's and Marcas Modelo's reasonable attorneys' fees and expenses and then one hundred percent (100%) to Constellation Beers if Constellation Beers choose to pursue the infringement or suspected infringement or one hundred percent (100%) to Marcas Modelo if Constellation Beers gave written notice that it would not pursue the infringement or suspected infringement and Marcas Modelo pursued such infringement or suspected infringement.

2.10 ***Ownership***. (a) Ownership of the Trademarks and of the goodwill associated therewith shall at all times remain in and inure solely to the benefit of Modelo Group, and any trademark rights or goodwill with respect thereto which may accrue as a result of advertising or sales of Importer Products or Interim Products shall be the sole and exclusive property of Modelo Group. Trademark rights (i) shall include any additions or modifications to the Trademarks, as well as any slogan, musical composition, name, emblem, symbol, trade dress or other device used to identify or refer to Importer Products or Interim Products or any Trademark sub-licensed hereunder, in each case, whether developed, created or used by Constellation Beers or any of its sub-licensees in the Territory, and (ii) may be used by Modelo Group, by Marcas Modelo or their importers, or their distributors or sub-licensees, according to the terms of this Agreement, in territories other than the Territory, in addition to the use thereof made by Constellation Beers in the Territory under this Agreement. If any such addition, modification or device is to be separately registered under the laws protecting trademarks, copyrights or other property rights, it shall be registered only in the name of Modelo Group, and Constellation Beers shall execute such documents as may be necessary to accomplish such registration.

(b) Marcas Modelo or Modelo Group shall be deemed to be the exclusive owner of all intellectual property used or developed in connection with this Agreement by Constellation Beers that (i) incorporates the Licensed Other IP and any derivative works based thereon; (ii) in the absence of this Agreement, would infringe upon or otherwise violate the rights of Marcas Modelo or Modelo Group in the Licensed Other IP under the laws of the Territory; or (iii) was developed by Constellation Beers based upon Confidential Information belonging to Marcas Modelo or Modelo Group. As between the parties and unless contrary to applicable law, Constellation Beers shall be the owner of any intellectual property independently developed by Constellation Beers that is not a result of the areas set forth above in clauses **(i)-(iii)** of this **Section 2.10(b)**. For example, should Constellation Beers create a type of Container or a functional element of a Container that is not a result of the areas set forth above in clauses **(i)-(iii)** of this **Section 2.10(b)**, even if such Container or a functional element of a Container is used with an Importer Product, Constellation Beers shall be the owner of the intellectual property rights with respect to such Container or functional element of such Container. For the avoidance of doubt, nothing herein shall give or be deemed to give Marcas Modelo or any member of the Modelo Group any rights in or to the Marks or other intellectual property rights that are owned by Constellation or any of its Affiliates unrelated to the subject matter of this Agreement.

(c) If, for any reason or circumstances, Constellation Beers is deemed under any law or regulation to have acquired any right or interest with respect to the Licensed Intellectual Property, Constellation Beers hereby assigns and shall, at the request of Marcas Modelo or Modelo Group, promptly execute any document reasonably needed in order for Constellation Beers to transfer to Marcas Modelo or Modelo Group any and all such rights, titles and interests in and to the Licensed Intellectual Property including the goodwill that they represent and the Licensed Intellectual Property.

2.11 ***Derivative Works***. Constellation Beers shall acquire no ownership rights in the Licensed Intellectual Property or derivative works based thereon or any intellectual property deemed to be owned by Marcas Modelo or Modelo Group as a result of this Agreement. Constellation Beers shall, at any time requested by Marcas Modelo or Modelo Group, whether during or subsequent to the term hereof, disclaim in writing any such property interest or ownership in the Licensed Intellectual Property.

2.12 ***Certain Restrictions***. Constellation Beers shall not, either directly or indirectly (and shall cause its Affiliates not, either directly or indirectly, to):

(a) establish, form, be an owner of, operate, administer, authorize or control any company, division, corporation, association or business entity under any name which includes any of the Trademarks, either in whole or part, or under any name which is confusingly similar to the Trademarks or "Grupo Modelo" (other than with respect to Constellation Beers, "Crown" as described in **Section 2.1(a)** or as expressly set forth in **Section 2.1(e)**);

(b) (except as expressly authorized by this Agreement) use, adopt, register, or seek to register, or in any other manner claim the ownership of, any Mark or trade dress that includes any of the Trademarks or that is confusingly similar to any of the Trademarks or Trade Dress (including in connection with Brand Extension Marks);

(c) use, or authorize any other Person to use, any Trademark or Trade Dress in connection with any Beer or any other good or service other than an Importer Product or Interim Product, except as expressly permitted by this Agreement;

(d) use, or authorize any other Person to use, Trade Dress for goods or services other than Importer Products for which such Trade Dress are designated for use by Marcas Modelo or otherwise permitted by this Agreement;

(e) combine a Trademark with any other Mark that is not a Trademark (other than any new Brand Extension Mark); or

(f) distribute or sell any Products to any buyers located outside the Territory, and to use its commercially reasonable efforts to prevent buyers from reselling such Products outside the Territory or in any manner not authorized by this Agreement (including by not selling to exporters or buyers who are known or would reasonably be expected to resell outside of the Territory); for clarity, it shall not be a breach of this Agreement to sell or distribute to cruise lines, airlines, tour operators and the like located within the Territory, so long as the Products are delivered within the Territory.

2.13 ***Confusingly Similar Marks***. Subject to **Section 2.15**, Constellation Beers shall not, and shall not permit any Affiliate or sublicensee to, use or register, any symbol, name, trademark, trade dress or device that is confusingly similar to (a) any Trademark or Trade Dress, or (b) any trademark rights retained by the Modelo Group as of the date of this Agreement.

2.14 ***Abandonment***. (a) If Constellation Beers fails to make any use in commerce (as the term is defined in 15 U.S.C. § 1127) of a brand with respect to all Trademarks and uses for any period comprising [****], Constellation Beers shall be presumed for purposes of this **Section 2.14** to have abandoned its licensed rights to use those brands in such Trademarks. Marcas Modelo shall give written notice to Constellation Beers of such abandonment and allow Constellation Beers to notify Marcas Modelo of Constellation Beers's intent not to abandon the Trademarks and of efforts to use the Trademarks in the future. Should Constellation Beers not reply to such notice from Marcas Modelo within [****] after the date of such notice, Constellation Beers shall be deemed to have abandoned such Trademarks for purposes of this Agreement, and, at any time thereafter immediately upon written notice by Marcas Modelo to Constellation Beers, (i) the Trademarks shall be deleted from **Exhibit B** or **Exhibit D** hereunder, (ii) all rights of Constellation Beers in and to such Trademarks under this Agreement shall terminate and, (iii) Marcas Modelo shall have the right to designate any Third Party as the assignee and beneficiary of all rights and obligations of Constellation Beers under this Agreement with respect to such deleted Trademarks, subject to the execution of a sublicense agreement between such Third Party and Marcas Modelo in substantially the same terms and conditions of this Agreement; provided that, in no event shall Marcas Modelo or its Affiliates re-acquire and practice such rights. Notwithstanding the removal of any Trademarks from **Exhibit B** or **Exhibit D**, neither Marcas Modelo nor any member of the Modelo Group shall be permitted to use such Trademark in the Territory if such use would be reasonably likely to cause confusion with another Trademark included in **Exhibit B** or **Exhibit D**.

(b) If Marcas Modelo, and all other members of the Modelo Group, fail to make any use in commerce (as that term is defined in 15 U.S.C. §1127) in all jurisdictions outside of the Territory of a brand with respect to all Trademarks and uses for any period comprising [****], Marcas Modelo shall be presumed for purposes of this **Section 2.14** to have abandoned its rights in such Trademarks in the Territory. Constellation Beers shall give written notice to Marcas Modelo of such abandonment and allow Marcas Modelo to notify Constellation Beers of Marcas Modelo's intent not to abandon the Trademarks and its efforts to use such Trademarks in the future outside of the Territory. Should Marcas Modelo not reply to such notice from Constellation Beers within [****] after the date of such notice, Marcas Modelo shall be deemed to have abandoned such Trademarks in the Territory for purposes of this Agreement, and Constellation Beers shall have the right to request that Marcas Modelo assign, and, upon such request, Marcas Modelo shall assign, or cause the applicable member of the Modelo Group to assign, its right, title, and interest in the Territory in and to the applicable Trademarks to Constellation Beers at no cost to Constellation Beers other than payment of any required assignment fee charged by a governmental authority.

2.15 ***Brand Extension Marks and Brand Extension Beers***. Subject to the terms, conditions and licenses herein:

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

(a) *Constellation Beers Brand Extension Marks.* Constellation Beers may, without the prior consent of Marcas Modelo, adopt new Brand Extension Marks that are not confusingly similar to any trademarks (excluding the Trademarks) owned by Marcas Modelo or its Affiliates in the Territory at the time of such proposed adoption, and concomitant accompanying new trade dress that is not confusingly similar to any trade dress including containers (excluding the Trade Dress) owned by Marcas Modelo or its Affiliates in the Territory at the time of such proposed adoption, solely for (i) the manufacturing, bottling, and packaging of Mexican-style Beer and importing, advertising, marketing and selling such Beer in the Territory and (ii) distributing of related collateral sales and promotional materials therefor and other items to be marketed and sold or provided without charge to consumers in conjunction with such Beer in the Territory. Provided that they meet the requirements of the foregoing sentence, such Brand Extension Marks shall be deemed to be Additional Trademarks and Trade Dress for purposes of this Agreement (including **Sections 2.8**, **2.9**, and **2.10**). Constellation Beers shall have the right to determine in its sole discretion the Beer Recipe it uses for each new Brand Extension Beer, which Beer Recipes may be variations or derivatives of Recipes of then-existing Products or entirely new Recipes, provided that such Recipes meet the Quality Standards.

(b) *Modelo Brand Extension Marks.* Constellation Beers may, upon [****] prior written notice to Marcas Modelo and solely for the manufacturing, bottling, and packaging of Mexican-style Beer in the Brewing Territory and importing, advertising, marketing and selling such Beer in the Territory and distributing of related collateral sales and promotional materials therefor and other items to be marketed and sold or provided without charge to consumers in conjunction with such Beer in the Territory, notify Marcas Modelo that it wishes to adopt a Brand Extension Mark created after the date of this Agreement by Marcas Modelo or Grupo Modelo and used by Grupo Modelo in Mexico or Canada for the manufacturing, bottling, packaging or selling of Mexican-style Beer. Provided that such Brand Extension Mark does not include and is not confusingly similar to any trademarks (excluding the Trademarks) owned by Marcas Modelo or its Affiliates in the Territory at the time of such notice from Constellation Beers, then such Brand Extension Mark shall be deemed to be an Additional Trademark for purposes of this Agreement (including Sections 2.8, 2.9, and 2.10). Constellation Beers shall have the right to determine in its sole discretion the Beer Recipe it uses for each such Brand Extension Beer, which Beer Recipes may be variations or derivatives of Recipes of then-existing Products or entirely new Recipes, provided that such Recipes meet the Quality Standards. For clarity, it is expressly understood and agreed that nothing in this Section 2.15(b) shall prevent Constellation Beers from adopting and using in the Territory as a Constellation Beers Brand Extension Mark any Modelo Brand Extension Mark so long as such adoption and use (i) complies with the provisions of Section 2.15(a) and (ii) does not infringe any intellectual property rights of the Modelo Group in the Territory.

(c) *Distilled Spirits.* Notwithstanding anything to the contrary herein, (i) Constellation Beers shall not adopt a Brand Extension Mark that adopts, refers to or incorporates the name of any type of distilled spirit (such as Corona Tequila), and (ii) Constellation Beers shall not use any distilled spirits as an ingredient in any Recipe for a Brand Extension Beer, unless included in a Recipe provided by, or required to be provided by, Marcas Modelo under this Agreement; provided, however, that if Marcas Modelo or Grupo

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

Modelo (1) adopts a Brand Extension Mark that adopts, refers to or incorporates the name of any type of distilled spirit (such as Corona Tequila) for Product marketed in Mexico or Canada, or (2) uses any type of distilled spirits or any type of distilled spirit flavor as an ingredient in any Recipe for a particular Product marketed in Mexico or Canada, then the restrictions of this **Section 2.15(c)** shall not preclude Constellation Beers from using (x) the name of any type of distilled spirit in its own Brand Extension Mark for any Product in the Territory or (y) any type of distilled spirit or distilled spirit flavor ingredient in the Recipe for any Product, in each case (which for the avoidance of doubt in the case of (x) and (y), need not be the same distilled spirit or distilled spirit flavor ingredient as used by Marcas Modelo or Grupo Modelo), solely in the Territory in accordance with the other terms and conditions of this Agreement.

(d) *Bottle Design.* Constellation Beers may use a Parent Product's Bottle Design (or other Container design) for any related Brand Extension Beer subject to and in accordance with the terms of this Agreement.

(e) *Ownership.* For the avoidance of doubt, Constellation Beers agrees that any and all Trademarks and Trade Dress related to any Brand Extension Beer manufactured, bottled and packaged by or on behalf of Constellation Beers hereunder shall be owned by Modelo Group, and Constellation Beers hereby assigns the foregoing to Marcas Modelo.

2.16 ***Changes to Form, Trademarks, Containers, Bottle Designs, Trade Dress or Recipes by Marcas Modelo.*** With respect to an Importer Product existing at the date of this Agreement, and subject to this **Section 2.15(b)**, Marcas Modelo may from time to time propose by written notice to Constellation Beers (a) reasonable changes in the approved form or use of the associated Trademarks, (b) reasonable changes to applicable Containers, Bottle Designs or Trade Dress, (c) an addition of a new Mark to **Exhibit B** as an Additional Trademark for use with such Importer Product, or (d) a change the Recipe for such Importer Product (other than a change of Recipe described in **Section 2.2(a)** above), in each case, in order to make such existing Importer Product more consistent with Products produced and sold outside of the Territory. Within a reasonable time following Constellation Beers' receipt of such notice, the parties shall discuss whether such changes or additions are mutually agreeable, and if acceptable, the terms and conditions of this Agreement shall govern such changes, provided that it is expressly understood and agreed that nothing in this Agreement, other than **Section 2.4(a)** and **Section 2.17**, shall prevent Constellation Beers from adopting and using in the United States any such change in Form, Trademark, Container, Bottle Design, Trade Dress or Recipe, so long as the adoption and use does not constitute trademark infringement or copyright infringement under applicable laws. For the avoidance of doubt, the Modelo Group shall have the right to make in its sole discretion any change to the Recipe for any existing Product and to any Brand Extension Beer marketed by Marcas Modelo or Grupo Modelo outside of the Territory.

2.17 ***Changes to Form, Trademarks, Containers, Bottle Designs, Trade Dress or Recipes by Constellation Beers.*** Subject to **Section 2.15**, and with respect to Products existing at the time of entry into this Agreement (or additional Recipes provided by Marcas Modelo under **Section 2.2**), Constellation Beers may from time to time propose by written notice to Marcas Modelo (a) reasonable changes in the approved form or use of the associated Trademarks, (b) reasonable changes to Containers, Bottle Designs or Trade Dress of the Products, (c) the addition of a new Mark to **Exhibit B** as an Additional Trademark for use with such

existing Importer Product, or (d) a change to the Recipe for such Importer Product. Constellation Beers shall not implement any changes or additions of the type described in the foregoing clauses (a), (b), or (c) without the prior written consent of Marcas Modelo; provided, however, that (i) for the avoidance of doubt, changes in the Recipe of any existing Products or any Constellation Beers Brand Extension Beers shall not require the consent of Marcas Modelo and (ii) Constellation Beers may adopt and use a new Container for a Product different in size, shape or materials from the Container in effect for such Product on the date hereof, but if such new Container is a glass bottle derived from an original glass Bottle Design of a Product (e.g., a smaller version of a glass bottle for Product sold under a CORONA Trademark), such new glass bottle Container shall reasonably conform to such original glass bottle Container in form, shape and proportion as closely as reasonably practicable (taking into account the change in size, shape or materials). It is expressly understood that consent of Marcas Modelo shall not be required for Packaging used by Constellation Beers to contain, ship, store or display containers for any Product. For the avoidance of doubt, Constellation Beers shall have the right to make in its sole discretion any change to the Recipe for any existing Product and to any Brand Extension Beer marketed by Constellation Beers or any of its Affiliates in the Territory.

2.18 ***Abandoned Trademarks***. Within a reasonable time following the date of this Agreement, Marcas Modelo shall allow, or cause its applicable member of Grupo Modelo to allow, the Abandoned Trademarks to be abandoned, lapse or otherwise expire. Constellation Beers agrees promptly following the date of this Agreement to make commercially reasonable efforts to wind-down its use of the Abandoned Trademarks including in connection with promotional materials and product labels that may include such Abandoned Trademarks. Within the Transition Period, Constellation Beers shall cease, and shall cause its Affiliates to cease, all use of the Abandoned Trademarks.

2.19 ***Confirmation.*** At the reasonable request of Constellation Beers, Marcas Modelo will provide documentation reasonably required by Constellation Beers for its tax or similar purposes demonstrating that Marcas Modelo has the necessary rights, as between Marcas Modelo and other members of Grupo Modelo, to grant the rights it purports to grant herein.

2.20 ***Brewery Territory.*** Marcas Modelo shall provide Constellation Beers with three months' advance notice of Modelo Group's intent to manufacture or have manufactured on its behalf any Product outside of Mexico (other than as a result of a Force Majeure Event).

2.21 ***Yeast.***

(a) *General.* From time-to-time as reasonably requested by Constellation Beers during the term of the Transition Services Agreement, Marcas Modelo shall transfer, or shall cause its Affiliates to transfer, to Constellation Beers an appropriate quantity of "mother" Yeast as necessary for Constellation Beers to propagate its own yeast for the manufacture of the Products and Brand Extension Beer; provided that Constellation Beers shall bear all reasonable costs relating to the supply of such Yeast (including delivery charges) incurred by Marcas Modelo in connection therewith. In the event that the Yeast colony of either Party dies or is compromised such Party may request, and the other Party shall, to the extent reasonably available, provide a new Yeast colony to the requesting Party at the cost of the requesting Party.

(b) *Cessation of Use.* In the event that Constellation Beers elects to cease using the Yeast, Constellation Beers shall (i) ensure that there is an immediate, orderly and proper disposal of any and all Yeast in production, propagation, culture, analytical or other systems, which manner of disposal shall be approved and supervised by Marcas Modelo; and (ii) diligently remove from any brewery all Yeast in a manner approved and supervised by Marcas Modelo.

ARTICLE III
QUALITY CONTROL

3.1 ***Marketing Standards.*** To protect the reputation and strength of the Trademarks and the goodwill associated with each Trademark, Constellation Beers shall: (a) always use the Trademarks in connection with the marketing and sale of Importer Products and Interim Products, and other activities with respect to the Trademarks, in a manner reasonably consistent with the requirements with respect to form, color, style and appearance of the applicable Brand Guidelines (and Constellation Beers shall reasonably consider and take into account the goodwill associated with the Trademarks in making any material changes to the other aspects of the Brand Guidelines such as strategic marketing), and (b) use and/or reproduce the Trademarks in accordance with all applicable laws, rules, and regulations. Further, Constellation Beers shall not do any willful or intentional act which would damage the image of the Products in the Territory, and shall refrain from taking any act which disparages, discredits, dishonors, reflects adversely upon, or in any other manner materially harms the Trademarks, or the goodwill associated therewith. Additionally, with respect to Importer Products and Interim Products, Constellation Beers shall comply with the Advertising and Marketing Code of the Beer Institute, as it may be amended from time to time.

3.2 ***Merchandise and Advertising Materials.*** Constellation Beers shall, and shall cause its Affiliates and sub-licensees to, ensure that any merchandise or advertising item that bears any Trademark is of sufficient quality so as not to disparage, discredit, dishonor, reflect adversely upon, or in any other manner materially harm the Trademarks, or the goodwill associated therewith. Notwithstanding the foregoing, Marcas Modelo shall not have the right to approve or disapprove of advertising created by Constellation Beers.

3.3 ***Importer Products.*** Constellation Beers shall, and shall cause its Suppliers to, comply with the quality standards in this **Article III** for Importer Products. Constellation Beers shall, and shall cause its Suppliers to, ensure all Importer Products are manufactured, bottled and packaged in accordance with the applicable Quality Standards. Other than as set forth in this Agreement, Constellation Beers shall not, and shall cause its Suppliers not to, alter the Trademarks, Containers, Bottle Designs or Recipe for any Importer Product. To the extent that a Recipe or Technical Specification specifies any particular ingredients, raw materials, yeast cultures, formulas, brewing processes or equipment or other items, Constellation Beers and its Suppliers may use functional substitutes or replacements for the foregoing that do not change the finished product, as would be determined by a reasonable Qualified Brewmaster. All Importer Products shall be manufactured and imported in a manner reasonably designed to assure they remain suitable for resale and consumption for a period of no less than one hundred eighty (180) days from the date of production.

3.4 ***Brand Extension Beers***. With respect to each Modelo Brand Extension Beer constituting an Importer Product, Constellation Beers shall, and shall cause its Suppliers to, follow the Brand Guidelines of any Parent Products and Parent Trademarks, respectively, to the extent that they are applicable, in manufacturing, bottling and packaging any such Brand Extension Beer. With respect to each Constellation Brand Extension Beer constituting an Importer Product, Constellation Beers shall, and shall cause its Suppliers to, create applicable Brand Guidelines therefor compliant with the requirements of **Section 2.15(a)** and applicable quality standards. Any such Brand Extension Beer (whether Modelo or Constellation) must be of a quality equal to or higher than the Quality Standards.

3.5 ***Packaging***. Constellation Beers shall, and shall cause its Suppliers to, package Beer that is produced pursuant to this Agreement only in a box, carton, wrap or similar item that contains other Products. Constellation Beers may include any number of bottles or cans in any particular box or carton.

3.6 ***Samples***. In order to verify compliance with the quality standards for Importer Products set forth in this **Article III**, Constellation Beers shall, and shall cause its Suppliers to, at its own cost submit to Marcas Modelo, no more frequently than once per calendar quarter, (a) a reasonable number of representative samples of Importer Products, including the Containers thereof, and any promotional products or any packaging or other materials bearing any Trademark used in marketing, merchandising, promoting, advertising (including sponsorship activities in connection with the foregoing), licensing, distributing or selling Importer Products in the Territory (provided that, for the avoidance of doubt, Constellation Beers is not required to submit any such samples, promotional products, packaging or other materials to Marcas Modelo in advance of actual use), and (b) compliance data that is reasonably necessary in order for Marcas Modelo to verify that Importer Products materially comply with applicable Quality Standards.

3.7 ***Inspection***. Upon reasonable advance notice, not more than twice per year (or in the event of a recall or withdrawal pursuant to **Section 3.9**, more frequently until the issues giving rise to such events are reasonably resolved) and subject to the reasonable confidentiality requirements of Constellation Beers, (a) Marcas Modelo or its representatives shall have the right, during regular business hours, to inspect the plants and facilities (including Yeast used therein) where Importer Products are manufactured, bottled, packaged, stored, or distributed, and (b) Constellation Beers shall, and shall cause its Suppliers to, make their respective representatives reasonably available to Marcas Modelo or its representatives, as may be reasonably necessary for Marcas Modelo or any of its representatives to adequately review the quality of the manufacturing, bottling, packaging, storage or distribution of Importer Products.

3.8 ***Brewmaster***. Constellation Beers shall, and shall cause its Suppliers to, employ or otherwise retain the services of (a) a qualified brewmaster to be responsible for supervising and directing the production, manufacturing, bottling and packaging of Importer Products and (b) a Person responsible for the systems, and compliance, to ensure appropriate quality procedures and control for the production, manufacturing, bottling and packaging of Importer Products.

3.9 ***Recalls***. In the event there is a withdrawal or recall by Constellation Beers or its Supplier of any Importer Product, Constellation Beers shall promptly notify Marcas Modelo and provide Marcas Modelo with such relevant information as reasonably will inform Marcas Modelo of the facts giving rise to the need for such withdrawal or recall, and the adequacy of steps taken by Constellation Beers or its sub-licensees to address any material concerns relating to quality identified in connection with such recall or withdrawal.

3.10 ***Quality Default***.

(a) In the event of a Quality Default, a party shall deliver a written notice to the other party of such Quality Default (a "**Quality Default Notice**") promptly after becoming aware of any such Quality Default. The parties shall promptly meet to discuss the Quality Default Notice and each party shall provide the other with full technical and analytical support to assist in identifying the problem and determining the correct procedures for resolving the same. Constellation Beers shall have [****] from and including the delivery of such Quality Default Notice to cure such Quality Default. In the event Constellation Beers fails to cure such Quality Default within [****] of such Quality Default Notice (a "**Quality Default Cure Failure**"), and Marcas Modelo has delivered a written notice to Constellation Beers confirming such failure (a "**Quality Default Cure Failure Notice**"), then, subject to the dispute resolution procedures in the remainder of this **Section 3.10**, Constellation Beers agrees that it shall, at its own cost, take all reasonably necessary steps to cure and mitigate the breach.

(b) In the event that Constellation Beers disagrees that a Quality Default or a Quality Default Cure Failure has occurred, it shall deliver a written notice to Marcas Modelo of its disagreement (a "**Disagreement Notice**"), which shall include the basis for such disagreement and shall be delivered within [****] of receipt by Constellation Beers of a Quality Default Notice or a Quality Default Cure Failure Notice, as applicable. In the event of such a disagreement, Constellation Beers and Marcas Modelo shall attempt to resolve such disagreement between themselves. If Constellation Beers and Marcas Modelo are unable to resolve the disagreement within [****] of receipt by Constellation Beers of a Quality Default Notice or a Quality Default Cure Failure Notice, as applicable, then Constellation Beers or Marcas Modelo will jointly select a Qualified Brewmaster; provided that if Constellation Beers and Marcas Modelo are unable to select such Qualified Brewmaster within [****] after delivery of a Quality Default Notice, within an additional [****], Constellation Beers and Marcas Modelo shall each select one brewmaster and those two brewmasters shall select a Qualified Brewmaster for purposes of this **Section 3.10**.

(c) Within [****] of the appointment of the Qualified Brewmaster, Constellation Beers and Marcas Modelo shall each deliver to the Qualified Brewmaster a detailed written report setting forth their respective proposed resolutions with respect to the disagreement and a detailed explanation of the basis and rationale for such party's position. The Qualified Brewmaster shall thereafter issue a written determination of whether a breach occurred, but no such determination shall award damages, or other relief, including relief which would terminate, result in a termination or have the same effect as termination of this Agreement, in whole or in part. The determination of the Qualified Brewmaster shall be final and binding upon the parties and the breach determined by the Qualified Brewmaster may be enforced in accordance with the terms of this Agreement.

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

3.11 ***De Minimis Breaches of Brand Guidelines.*** Should Constellation Beers take any action inconsistent with the Brand Guidelines that constitute merely a *de minimis* breach of **Sections 2.4**, **3.1(a)** or **3.4** with respect to Importer Products, Containers, Packaging or Marketing Materials, Marcas Modelo shall not have the right to require, and Constellation Beers shall not be obligated, to destroy, recall, remove or otherwise cease the use of any then-existing stock of any such Importer Product, Containers, Packaging or Marketing Materials at issue.

ARTICLE IV
TERM

4.1 ***Term.*** The term of this Agreement shall commence on the date hereof and shall continue in perpetuity. The parties acknowledge and agree that Marcas Modelo shall have no right to terminate this Agreement notwithstanding any breach of this Agreement by Constellation Beers, at any time. Marcas Modelo retains only the right to bring a claim as provided for herein at Article VI against Constellation Beers for damages or to seek any other remedies available to it at law or equity for any claimed breach, but excluding any remedies that would seek to terminate, or result in the termination of this Agreement.

ARTICLE V
INDEMNIFICATION AND INSURANCE

5.1 ***By Constellation Beers.*** From and after the date hereof, Constellation Beers shall defend, indemnify and hold harmless Marcas Modelo and its Affiliates and its and their respective officers, directors, employees, representatives and agents (the "**Modelo Indemnitees**") in respect of all damages, liabilities, losses, costs and expenses of any and every nature or kind whatsoever, including reasonable attorneys' fees and disbursements and all amounts paid in investigation, defense or settlement of any or all of the foregoing) ("**Damages**") that any of the Modelo Indemnitees may incur as a result of third-party actions, proceedings or claims to the extent arising out of or in consequence of: (a) the formulation, manufacture, production, packaging, transportation, storage, marketing, merchandising, promotion, advertisement (including sponsorship activities in connection with the foregoing), licensing, distribution or sale of any products, materials or services by or on behalf of Constellation Beers, its Affiliates or its sub-licensees that bear the Trademarks (other than to the extent caused by (i) any breach of any obligation of any member of the Modelo Group to Constellation Beers or its Affiliates, or (ii) the infringement caused solely by the Licensed Intellectual Property existing as of the date of this Agreement, other than Licensed Intellectual Property to the extent created by Constellation Beers or its Affiliates under the Original Agreement); (b) any breach of this Agreement by Constellation Beers; (c) any infringement to the extent arising from any use of a Brand Extension Mark created by Constellation Beers or any of its Affiliates or sub-licensees in the Territory (other than to the extent such infringement is caused solely by the associated Parent Trademark as it exists of the date of this Agreement), or (d) any failure by Constellation Beers or its employees, agents, or its sub-licensees to comply with applicable law in connection with this Agreement.

5.2 ***By Marcas Modelo.*** From and after the date hereof, Marcas Modelo shall defend, indemnify and hold harmless Constellation Beers and its Affiliates and its and their respective officers, directors, employees, representatives and agents (the "**Constellation Beers**

Indemnitees") in respect of all Damages that any of Constellation Beers Indemnitees may incur as a result of third-party actions, proceedings or claims to the extent arising out of or in consequence of: (a) the formulation, manufacture, production, packaging, transportation, storage, marketing, merchandising, promotion, advertisement (including sponsorship activities in connection with the foregoing), licensing, distribution or sale of any products, materials or services by or on behalf of Marcas Modelo, its Affiliates or its sub-licensees (other than Constellation Beers or its Affiliates and their sub-licensees) that bear the Trademarks, in each instance other than due to a breach of this Agreement by any Constellation Beers Indemnitee; (b) any breach of this Agreement by Marcas Modelo; or (c) any failure by Marcas Modelo or its employees or agents to comply with applicable law in connection with this Agreement.

5.3 ***Insurance***. Each of Constellation Beers and Marcas Modelo shall maintain at its own expense sufficient insurance, including products liability and blanket contractual liability ("**Liability Insurance**"), to meet any claims that might reasonably be expected to arise against either of them in connection with the sale or distribution of any Products or any other items pursuant to this Agreement. Each of Constellation Beers and Marcas Modelo agrees that the other party shall be added as an "additional insured as their interest may appear" on the other party's Liability Insurance policy. Each of Constellation Beers's and Marcas Modelo's Liability Insurance shall be underwritten by financially sound, reputable insurance carriers that are reasonably satisfactory to the other party. Each of Constellation Beers and Marcas Modelo shall promptly provide the other with evidence of such Liability Insurance upon request.

5.4 ***No Implied Warranty***. ALL LICENSED INTELLECTUAL PROPERTY AND OTHER RIGHTS AND MATERIALS LICENSED OR OTHERWISE PROVIDED BY OR ON BEHALF OF EITHER PARTY OR THEIR ANY OF THEIR RESPECTIVE AFFILIATES UNDER THIS AGREEMENT (INCLUDING ALL RECIPES, MARKETING OR PROMOTIONAL MATERIALS, TRADE DRESS, AND DESIGNS) ARE PROVIDED ON AN "AS IS" BASIS, AND EACH PARTY HEREBY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING WITH RESPECT TO THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. The foregoing notwithstanding, each party warrants to the other party that tangible embodiments of Licensed Other IP and Recipes provided pursuant to this Agreement shall be complete and accurately reflect those embodiments that are used by such providing party and, at the reasonable request of the receiving party, the providing party will reasonably cooperate respond to questions or reasonably supplement such information consistent with the intent of this Agreement.

ARTICLE VI
GOVERNING LAW AND JURISDICTION

6.1 ***Governing Law***. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its principles of conflicts of laws that would require application of the substantive laws of any other jurisdiction. Constellation Beers and Marcas Modelo agree that the International Convention on the Sale of Goods shall not apply to this Agreement.

6.2 ***Jurisdiction***. Constellation Beers and Marcas Modelo irrevocably consent to the exclusive personal jurisdiction and venue of the courts of the State of New York or the federal courts of the United States, in each case sitting in New York County, in connection with any action or proceeding arising out of or relating to this Agreement. Constellation Beers and Marcas Modelo hereby irrevocably waive, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of such action or proceeding brought in such a court and any claim that any such action or proceeding brought in such court has been brought in an inconvenient forum. Constellation Beers and Marcas Modelo irrevocably consent to the service of process with respect to any such action or proceeding in the manner provided for the giving of notices under **Section 9.5**, provided, the foregoing shall not affect the right of either Constellation Beers or Marcas Modelo to serve process in any other manner permitted by law. Notwithstanding the foregoing, Constellation Beers and Marcas Modelo agree that neither may bring a judicial action or administrative proceeding unless and until the parties have provided the other party a reasonable opportunity to engage in non-binding arbitration, to be held in the County and City of New York, before the CPR Institute for Dispute Resolution, or such other alternative dispute resolution provider as they may mutually agree upon; provided that, the obligations of the parties under the foregoing sentence shall expire with respect to any dispute within ninety (90) days after notice is first provided by either party.

6.3 ***Enforcement of Judgment***. Constellation Beers and Marcas Modelo hereby agree that a final judgment in any suit, action or proceeding shall be conclusive and may be enforced in any jurisdiction by suit on the judgment or in any manner provided by applicable law.

ARTICLE VII
CONFIDENTIALITY

7.1 Unless otherwise agreed to in writing by Constellation Beers, Marcas Modelo agrees (and Marcas Modelo agrees to cause its Affiliates) (a) to keep confidential all Confidential Information of Constellation Beers and not to disclose or reveal any of such Confidential Information to any person other than those directors, officers, employees, stockholders, legal counsel, accountants, and other agents of Marcas Modelo or its Affiliates who are actively and directly participating in the performance of the obligations and exercise of the rights of Marcas Modelo under this Agreement, and (b) not to use Confidential Information of Constellation Beers for any purpose other than in connection with the performance of the obligations and exercise and enforcement of the rights of Marcas Modelo hereunder. The obligation to maintain the confidentiality of and restrictions on the use of Confidential Information hereunder shall include any Confidential Information of Constellation Beers obtained by Marcas Modelo and its Affiliates prior to the date hereof. If Marcas Modelo is required by law, court order or government order or regulation to disclose Confidential Information of Constellation Beers, Marcas Modelo shall provide notice thereof to Constellation Beers and, after consultation with Constellation Beers and, at the sole cost and expense of Constellation Beers, reasonably cooperating with Constellation Beers to object to or limit such disclosure, shall be permitted to disclose only that Confidential Information so required to be disclosed.

7.2 Unless otherwise agreed to in writing by Marcas Modelo, Constellation Beers agrees (and Constellation Beers agrees to cause its Affiliates and sub-licensees) (a) to keep confidential all Confidential Information of Marcas Modelo and the Modelo Group and not to disclose or reveal any of such Confidential Information to any person other than those directors, officers, employees, stockholders, legal counsel, accountants, and other agents of Constellation Beers or its Affiliates or sub-licensees who are actively and directly participating in the performance of the obligations and exercise of the rights of Constellation Beers under this Agreement, and (b) not to use Confidential Information of Marcas Modelo and the Modelo Group for any purpose other than in connection with the performance of the obligations and exercise and enforcement of the rights of Constellation Beers hereunder. The obligation to maintain confidentiality of and restrictions on the use of Confidential Information hereunder shall include any Confidential Information of Marcas Modelo and the Modelo Group obtained by Constellation Beers prior to the date hereof. If Constellation Beers is required by law, court order or government order or regulation to disclose Confidential Information, Constellation Beers shall provide notice thereof to Marcas Modelo and, after consultation with Marcas Modelo and, at the sole cost and expense of Marcas Modelo, reasonably cooperating with Marcas Modelo to object to or limit such disclosure, shall be permitted to disclose only that Confidential Information so required to be disclosed.

7.3 Constellation Beers acknowledges that certain elements in the Licensed Other IP are the Confidential Information and trade secrets of ABI and its Affiliates, and Constellation Beers shall, and shall cause its Affiliates and sub-licensees to, protect such elements with the same degree of care that it uses to protect its own Confidential Information and trade secrets of a similar nature, but no less than a reasonable degree of care.

7.4 The parties agree that Confidential Information of Constellation Beers provided under this **Article VII** and/or that is order or pricing information is competitively sensitive, and Marcas Modelo shall establish, implement and maintain strict procedures and take such other steps that are reasonably necessary to prevent disclosure of such Confidential Information to any person other than determined to be advisable in connection with the performance of the objectives and exercise of rights under this Agreement; and in no case may Marcas Modelo permit disclosure to its representatives and employees or representatives and employees of its Affiliates who have direct responsibility for marketing, distributing or selling Beer in competition with the Importer Products in the Territory.

ARTICLE VIII
TAXES

8.1 ***Withholding***. The payment of the Up-Front Payment (as defined in the Brewery SPA) (including any adjustment thereto) , which is made pursuant to the Brewery SPA, and any payment made pursuant to **Section 8.2** of this Agreement shall be made without deduction or withholding for any taxes (other than taxes imposed on net income in Mexico), except as required by applicable law. If any applicable law requires the deduction or withholding of any tax from such payment, then Constellation Beers or its assignee shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with applicable law and, if such payment is made by a Person other than Constellation Beers and such tax would not have been

imposed had Constellation Beers made such payment, then the sum payable to Marcas Modelo shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this section) Marcas Modelo receives an amount equal to the sum it would have received had no such deduction or withholding been made.

8.2 ***Other Taxes.*** If and to the extent Constellation Beers exercises its right pursuant to **Section 9.1** to assign its rights and obligations under this Agreement to another Person, Constellation Beers shall indemnify and hold harmless Marcas Modelo or any of its Affiliates from and against any taxes, including, for the avoidance of doubt, any value added or other similar taxes, for which Marcas Modelo may become liable for which Marcas Modelo would not have been liable had Constellation Beers not assigned its rights and obligations under this Agreement.

ARTICLE IX
MISCELLANEOUS

9.1 ***Assignment.*** Neither party may assign any right under this Agreement without the prior written consent of the other party; provided, that (a) Constellation Beers may assign or transfer (by sale of assets, sale of stock, merger, operation of law or otherwise) this Agreement and its rights and obligations hereunder to any Affiliate of Constellation, (b) Constellation Beers may assign and transfer this Agreement and all of its rights and obligations hereunder to any Third Party to whom Constellation Beers or its assigee sells or transfers (by sale of assets, sale of stock, merger, operation of law or otherwise) all or substantially all of its business with respect to Product in the Territory, and in that event such assignee shall be deemed to be Constellation Beers for all purposes of this Agreement, (c) Marcas Modelo may assign or transfer this Agreement and its rights and obligations hereunder in whole or in part to any Subsidiary of ABI, or (d) Marcas Modelo may assign or transfer this Agreement and its rights and obligations hereunder to any Third Party to whom Marcas Modelo sells or transfers (by sale of assets, sale of stock, merger, operation of law or otherwise) all or substantially all of its business with respect to Product, and in that event such assignee shall be deemed to be Marcas Modelo for all purposes of this Agreement; provided, further, that any such assignee of either party agrees in writing to be bound by all terms and conditions of this Agreement and the assigning party remains liable for its assignee's performance under this Agreement. Any purported assignment not in strict compliance with the preceding sentence shall be null and void and of no force and effect. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. In the event that Constellation Beers desires to assign or transfer less than all of its rights under this Agreement to any third party that is not an Affiliate of Constellation Beers or to which it does not assign or transfer all or substantially all of its business with respect to Product in the Territory, the consent of Marcas Modelo as set forth in the first sentence of this **Section 9.1** shall not be unreasonably withheld.

9.2 ***Force Majeure.*** During the pendency of any Force Majeure Event affecting a brewing facility of Constellation Beers or Constellation Beers's Supplier(s) in Mexico, Constellation Beers will discuss with Marcas Modelo and provide reasonable consideration of any offer made by Marcas Modelo to brew and deliver as directed by Constellation Beers, any

affected Beer capacity in Mexico during the pendency of such Force Majeure Event prior to engaging any manufacturing source outside of Mexico.

9.3 ***Headings***. The captions used in this Agreement are for convenience of reference only and shall not affect any obligation under this Agreement.

9.4 ***Counterparts***. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts, taken together, shall constitute one and the same instrument. Signatures sent by facsimile shall constitute and be binding to the same extent as originals. This Agreement may not be amended except by an instrument in writing signed by both parties.

9.5 ***Notices***. Any notice, claims, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and will be duly given if: (a) personally delivered, (b) sent by facsimile or (c) sent by Federal Express or other reputable overnight courier (for next Business Day delivery), shipping prepaid as follows:

If to Constellation Beers:	Constellation Beers Ltd One South Dearborn St., Suite 1700 Chicago, IL 60603 Attention: President Telephone: +1 (312) 873-9600 Facsimile: +1(312) 346-7488
With a copy to (which copy shall not serve as notice hereunder):	Constellation Brands, Inc. 207 High Point Drive, Building 100 Victor, New York 14564 Attention: General Counsel Telephone: +1 (585) 678-7266 Facsimile: +1 (585) 678-7103
With a second copy to (which copy shall not serve as notice hereunder):	Nixon Peabody LLP 1300 Clinton Square Rochester, NY Attention: James O. Bourdeau Telephone: +1 (585) 263-1000 Facsimile: +1 (585) 263-1600
If to Marcas Modelo:	Marcas Modelo, S.A. de C.V. Av. Javier Barros Sierra 555-3 Piso Col. Santa Fe, 01210, Mexico, D.F. Attention: General Counsel Telephone: + (52.55) 2266-0000 Facsimile: + (52.55) 2266-0000
With a copy to (which copy	Anheuser-Busch InBev

shall not serve as notice hereunder):

Brouwerijplein 1
Leuven 3000
Belgium
Attention: Chief Legal Officer & Company Secretary
Telephone: +32 16 27 69 42
Facsimile: +32 16 50 66 99

With a second copy to (which copy shall not serve as notice hereunder):

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Frank J. Aquila
George J. Sampas
Krishna Veeraraghavan
Nader A. Mousavi
Telephone: +1 (212) 558-4000
Facsimile: +1 (212) 558-3588

or such other address or addresses or facsimile numbers as the person to whom notice is to be given may have previously furnished to the others in writing in the manner set forth above. Notices will be deemed given at the time of personal delivery, if sent by facsimile, when sent with electronic notification of delivery or other confirmation of delivery or receipt, or, if sent by Federal Express or other reputable overnight courier, on the day of delivery.

9.6 ***Entire Agreement***. This Agreement (including the schedules and exhibits hereto, which are incorporated into this Agreement by this reference and made a part hereof), the Confidentiality Agreement, dated as of May 26, 2012, by and between CBI, ABI and solely with respect to Section 2 thereof, Grupo Modelo (the "**Confidentiality Agreement**"), the Brewery SPA, the Membership Interest Purchase Agreement, and the Restated LLC Agreement (as defined in the Membership Purchase Agreement and solely to the extent Constellation Beers and Constellation do not acquire all of Constellation Beers' Interest (as defined in the Membership Purchase Agreement)), and the Transition Services Agreement and each of the other Transaction Documents, constitute the entire agreement among the parties with respect to the subject matter hereof and thereof, and supersede all prior or contemporaneous agreements and understandings, whether written or oral, among the parties hereto, or any of them, with respect to the subject matter hereof and thereof.

9.7 ***Severability***. To the extent that any provision of this Agreement is invalid or unenforceable in the Territory or any state or other area of the Territory, this Agreement is hereby deemed modified to the extent necessary to make it valid and enforceable within such state or area, and the parties shall promptly agree in writing on the text of such modification.

9.8 ***Injunction; Waiver***. The parties acknowledge that a breach or threatened breach by them of any provision of this Agreement will result in the other entity suffering irreparable harm which cannot be calculated or fully or adequately compensated by recovery of damages alone. Accordingly, the parties agree that any party may, in its discretion (and without

limiting any other available remedies), apply to any court of law or equity of competent jurisdiction for specific performance and injunctive relief (without necessity of posting a bond or undertaking in connection therewith) in order to enforce or prevent any violations of this Agreement, and any party against whom such proceeding is brought hereby waives the claim or defense that such party has an adequate remedy at law and agrees not to raise the defense that the other party has an adequate remedy at law. The failure of either party at any time to require performance of any provision of this Agreement shall in no manner affect such party's right to enforce such provision at any later time. No waiver by any party of any provision, or the breach of any provision, contained in this Agreement shall be deemed to be a further or continuing waiver of such or any similar provision or breach.

9.9 ***Successors and Assigns; Third Party Beneficiaries***. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. Nothing in this Agreement shall give any other Person any legal or equitable right, remedy or claim under or with respect to this Agreement or the transactions contemplated hereby.

9.10 ***Amendment and Restatement***. The Original Agreement shall be deemed amended and restated in its entirety as of the date hereof by this Agreement and the Original Agreement shall thereafter be of no further force and effect except to evidence any rights and obligations of the parties or action or omission performed or required to be performed pursuant to such Original Agreement prior to the date hereof.

9.11 ***Bankruptcy***. The failure of any party hereto to perform any remaining obligations of such party under this Agreement shall not excuse performance by the other party of its obligations hereunder. Accordingly, for purposes of Section 365(n) of The Bankruptcy Reform Act of 1978, as amended, and codified as 11 U.S.C. §§ 101 et. seq. (the "**Bankruptcy Code**") or any analogous provision under any law of any foreign or domestic, federal, state, provincial, local, municipal or other governmental jurisdiction relating to bankruptcy, insolvency or reorganization ("**Foreign Bankruptcy Law**"), (a) this Agreement will not be deemed to be an executory contract, and (b) if for any reason this Agreement is deemed to be an executory contract, the licenses granted under this Agreement shall be deemed to be licenses to rights in "intellectual property" as defined in Section 101 of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law and Constellation Beers shall be protected in the continued enjoyment of its right under this Agreement including, without limitation, if Constellation Beers so elects, the protection conferred upon licensees under 11 U.S.C. Section 365(n) of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

MARCAS MODELO, S.A. DE C.V.

By _____
Name:
Title:

By _____
Name:
Title:

CONSTELLATION BEERS LTD.

By _____
Name:
Title:

[Signature Page to Sub-license Agreement]

Exhibit A

TRADEMARK APPLICATIONS & REGISTRATIONS TO BE ABANDONED

Mark	Ser./Reg./App. No.	Jurisdiction
CELEBRATE CORONA DE MAYO	SN:85-645063	USA
COME CORONA WITH ME (Stylized)	SN:76-573148; RN:2,918,722	USA
CORONA DECOR	SN:76-230093; RN:2,517,268	
CORONA EXTRA READY TO SERVE	SN:85-818733	USA
CORONA EXTRA READY TO SERVE and Design	SN:85-818736	USA
CORONA START THE PARTY	SN:77-121219; RN:3,358,680	USA
CORONA WIDE OPEN	SN:77-665053; RN:4,060,380	USA
CORONA WIDE OPEN and Design	SN:77-665055; RN:3,986,182	USA
CORONA ZONA	SN:76-229560; RN:4,200,383	USA
CORONAVILLE	SN:78-725979; RN:3,221,680	USA
GOMODELO	SN:85-496131; RN:4,189,942	USA
SAVETHEBEACH.ORG CORONASAVETHEBEACH.ORG and Design	SN:85-769317	USA
CERVECERIA DEL PACIFICO S.A. DE C.V. CERVEZA PACIFICO CLARA	RN: CA 93009; AN: 01013055	California
PACIFICO and Design	SN:73-367145; RN:1,336171	USA
CORONA.COM	SN:75-632870; RN:2,663,599	USA

Exhibit B

ADDITIONAL TRADEMARKS

Mark/Name	Ser./Reg./App. No.	Jurisdiction
CERVEZA LA CERVEZA MAS FINA CORONA LIGHT CONT. NET. 340 ML and Design	SN:77-410946; RN:3,629,573	USA
CONEXION CORONA	SN:77-120568; RN:3,908,281	USA
CORONA	SN:76-054459; RN:2,634,004	USA
CORONA	SN:76-230273; RN:2,817,872	USA
CORONA (Stylized)	SN:74-337257; RN:2,489,710	USA
CORONA (Stylized)	SN:76-090432; RN:2,590,621	USA
CORONA (Stylized)	SN:76-230586; RN:2,684,504	USA
CORONA (Stylized)	SN:75-875857; RN:3,631,787	USA
CORONA and Design	SN:74-337256; RN:2,489,709	USA
CORONA BEACH HOUSE	SN:85-081351; RN:3,984,217	USA
CORONA CANTINA	SN:85-645045	USA
CORONA DE MAYO	SN:85-645064	USA
CORONA EXTRA	SN:76-090433; RN:2,600,236	USA
CORONA EXTRA	SN:75-875865; RN:2,702,882	USA
CORONA EXTRA	SN:76-231041; RN:2,817,873	USA
CORONA EXTRA (Stylized)	SN:74-337259; RN:2,489,711	USA
CORONA EXTRA (Stylized)	SN:76-230810; RN:2,687,262	USA
CORONA EXTRA and Design	SN:76-559142; RN:2,993,696	USA
CORONA EXTRA and Design	SN:76-544591; RN:3,329,891	USA
CORONA EXTRA CERVEZA LA CERVEZA MAS FINA and Design	SN:77-118947; RN:3,544,218	USA
CORONA EXTRA CERVEZA LA CERVEZA MAS FINA and Design	SN:77-118906; RN:3,544,217	USA
CORONA EXTRA LA CERVEZA MAS FINA and Design	SN:74-337255; RN:2,489,708	USA
CORONA EXTRA LA CERVEZA MAS FINA and Design	SN:78-907233; RN:3,317,902	USA
CORONA FAMILIAR	SN:85-420269	USA
CORONAROJO	SN:85-383807	USA
CORONAROJO	SN:85-354655	USA
CORONITA	SN:85-383802	USA
CORONITA LIGHT	SN:77-379759; RN:3,549,260	USA
CORONITA LIGHT and Design	SN:77-419975; RN:3,611,200	USA
FIND YOUR BEACH	SN:77-870491; RN:4,191,028	USA
FIND YOUR BEACH	SN:85-499815	USA
LA CERVEZA MAS FINA	SN:76-544594; RN:2,963,654	USA
LA CERVEZA MAS FINA and Design	SN:74-337258; RN:1,828,343	USA
MODELO	SN:76-338317; RN:2,631,391	USA
MODELO ESPECIAL	SN:76-338316; RN:2,631,390	USA
MODELO ESPECIAL	SN:85-740870	USA

Mark/Name	Ser./Reg./App. No.	Jurisdiction
CHELADA		
MODELO LIGHT (Stylized)	SN:85-656356	USA
MODELO LIGHT (Stylized)	SN:85-656355	USA
MODELO LIGHT and Design	SN:85-663677	USA
MODELO LIGHT and Design	SN:85-656354	USA
NEGRA MODELO	SN:76-338315; RN:2,631,389	USA
RELAX RESPONSIBLY	SN:77-120546; RN:3,576,821	USA
RELAX RESPONSIBLY and Design	SN:77-121268; RN:3,463,388	USA
RONAS & RITAS	SN:75-475936; RN:2,279,069	USA
RONAS AND 'RIAS	SN:85-413853	USA
RONAS AND 'RIAS	SN:85-383813	USA
VIVA CORONA	SN:85-645054	USA
Crown & Griffins Design	SN:73-708295; RN:1,548,371	USA
Miscellaneous Design	SN:85-469388	USA
Coins & King Design	SN:85-469380	USA
King Design	SN:85-469400	USA
Lion Design	SN:85-656360	USA
Lion Design	SN:85-656358	USA
Lion Design	SN:85-656357	USA
CORONA	RN: TX 33569; AN: 00494075	Texas
CORONA EXTRA	RN: UT 29675; AN: 20805621	Utah
CORONA EXTRA	RN: DE 1989-67233; AN: 08008434	Delaware
CORONA EXTRA	RN: NM 89012001; AN: 01076098	New Mexico
CORONA EXTRA	RN: NH (No Registration Number); AN: 01064334	New Hampshire
CORONA EXTRA	RN: MD 19897054; AN: 01057827	Maryland
CORONA EXTRA	RN: MA 42599; AN: 01055262	Massachusetts
CORONA EXTRA	RN: AZ 17892; AN: 00494153	Arizona
CORONA EXTRA	RN: NM (No Registration Number); AN: 00494152	New Mexico
CORONA EXTRA	RN: TX (No Registration Number); AN: 00494108	Texas
CORONA EXTRA	RN: ID 12517; AN: 00341706	Idaho
CORONA EXTRA	RN: NJ 8463; AN: 00339969	New Jersey
CORONA EXTRA	RN: CT 7439; AN: 00338212	Connecticut
CORONA EXTRA	RN: ME 19890160; AN: 00330567	Maine
CORONA EXTRA	RN: IL 63823; AN: 00329652	Illinois
CORONA EXTRA	RN: LA (No Registration Number); AN: 00017204	Louisiana
CORONA EXTRA LA CERVEZA MAS FINA	RN: WA 17801; AN: 41800097	Washington
CORONA EXTRA LA CERVEZA MAS FINA	RN: WA 9944; AN: 00016520	Washington
MODELO	RN: CA 51955; AN: 00241431	California
MODELO ESPECIAL	RN: CA 99414; AN: 23100029	California
Design	RN: CA 51922; AN: 00241430	California
VICTORIA	RN: CA 52397; AN: 00241579	California
PACIFICO	SN:76-497182; RN:2,885,751	USA
PACIFICO and Design	SN:76-497180; RN:2,862,190	USA
PACIFICO LIGHT	SN:78-896659; RN:3,381,909	USA
CORONARITA	SN:85-383808	USA

Mark/Name	Ser./Reg./App. No.	Jurisdiction
CORONITA RITA	SN:85-383810	USA
CERVECERIA DEL PACIFICO, S.A. DE C.V. CERVEZA PACIFICO CLARA and Design	SN:74-071659; RN:1,671,994	USA
CERVECERIA MODELO S.A. DE C.V. MEXICO MODELO ESPECIAL and Design	SN:77-100703; RN:3,576,774	USA
CERVECERIA MODELO	SN:77-849176; RN:3,896,060	USA
CORONARITA	SN: 85-637980	USA
FAMILIAR (stylized)	SN: 85-420278	USA
Miscellaneous Design	SN: 78-605037	USA

EXHIBIT C

BRAND GUIDELINES

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

Exhibit D

TRADEMARKS

Mark	Ser./Reg./App. No.	Jurisdiction
CERVEZA MODELO LIGHT and Design	SN:78-787355; RN:3,210,796	USA
CORONA	SN:77-221594; RN:3,388,558	USA
CORONA (Stylized)	SN:73-625255; RN:1,681,366	USA
CORONA and Design	SN:73-625252; RN:1,689,218	USA
CORONA EXTRA	SN:77-221686; RN:3,388,566	USA
CORONA EXTRA (Stylized)	SN:73-625250; RN:1,681,365	USA
CORONA EXTRA LA CERVEZA MAS FINA and Design	SN:73-625248; RN:1,729,694	USA
CORONA LIGHT	SN:77-410950; RN:3,605,139	USA
CORONA LIGHT and Design	SN:75-876356; RN:2,406,232	USA
CORONA LIGHT and Design	SN:74-123829; RN:1,727,969	USA
CORONITA EXTRA	SN:74-132069; RN:1,729,701	USA
CORONITA EXTRA LA CERVEZA MAS FINA and Design	SN:74-160423; RN:1,761,605	USA
LA CERVEZA MAS FINA and Design	SN:73-625249; RN:1,495,289	USA
MODELO	SN:73-021202; RN:1,022,817	USA
MODELO ESPECIAL	SN:72-464917; RN:1,055,321	USA
MODELO ESPECIAL and Design	SN:85-074167; RN:4,060,986	USA
MODELO LIGHT	SN:78-771233; RN:3,183,378	USA
NEGRA MODELO	SN:73-128857; RN:1,217,760	USA
NEGRA MODELO and Design	SN:77-499866; RN:3,567,209	USA
VICTORIA and Design	SN:85-469396	USA
Crown & Griffins Design	SN:73-625251; RN:1,462,155	USA
Crown Design	SN:76-617147; RN:3,048,028	USA
King Design (for Victoria Product)	SN:85-469392; RN:4,146,769	USA
Miscellaneous Design (for Victoria Product)	SN:85-469385; RN:4,146,768	USA
Miscellaneous Design (for Victoria Product)	SN:85-469375; RN:4,146,767	USA
PACIFICO	SN:74-071754; RN:1,726,063	USA
PACIFICO CLARA	SN:76-514146; RN:2,866,272	USA
LA CERVEZA DEL PACIFICO CERVEZA PACIFICO CLARA and Design	SN:77-244688; RN:3,589,696	USA
CERVEZA BARRILITO	SN:77-295228; RN:3,440,278	USA
CORONARITA	SN:85-354652	USA
CORONITA RITA	SN:85-413849	USA

Mark	Ser./Reg./App. No.	Jurisdiction
MODELO ESPECIAL CERVECERIA MODELO MEXICO and Design	SN:85-074113; RN:4,115,677	USA
CERVECERIA MODELO, S.A. DE C.V. - MEXICO and Design	SN:78-605075; RN:3,191,287	USA
VICTORIA	Common Law	USA
LEON	SN:85-459133	USA
LEON	SN:85-459120	USA
LEON	SN:85-459153	USA
LEON	SN:85-459142	USA
LEON (Stylized)	SN:85-459165	USA
LEON (Stylized)	SN:85-459162	USA
LEON (Stylized)	SN:85-459159	USA
LEON (Stylized)	SN:85-459157	USA
LEON and Design	SN:85-459181	USA
LEON and Design	SN:85-459177	USA
LEON and Design	SN:85-459180	USA
LEON and Design	SN:85-459175	USA

Exhibit E

CHELADA TRADEMARKS

Mark/Name	Ser./Reg./App. No.	Jurisdiction
CERVEZA MODELO ESPECIAL CHELADA and Design	SN:85-766205	USA
CERVEZA MODELO ESPECIAL CHELADA and Design	SN:85-766203	USA

Exhibit F

NON-EXCLUSIVE TRADEMARKS

Mark/Name	Ser./Reg./App. No.	Jurisdiction
CELEBRATE CINCO	SN: 85-645065	USA
¡CELEBREMOS! CELEBRATE CINCO	SN: 85-645049	USA
FAMILIAR	SN: 85-420277	USA

EXHIBIT B

FORM OF TRANSITION SERVICES AGREEMENT

EXHIBIT B
TO FIRST AMENDMENT TO STOCK PURCHASE AGREEMENT

TRANSITION SERVICES AGREEMENT

dated as of [●], 2013

between

ANHEUSER-BUSCH INBEV SA/NV

and

CONSTELLATION BRANDS, INC.

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT, dated as of [•], 2013 (this "Agreement"), is entered into by and between Anheuser-Busch In Bev SA/NV, a Belgian corporation ("Seller") and Constellation Brands, Inc, a Delaware corporation (the "Purchaser" and, together with Seller, each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, pursuant to the terms and conditions of that certain Stock Purchase Agreement, dated as of [•], 2013 (as amended, modified or supplemented from time to time in accordance with its terms, the "Stock Purchase Agreement"), between Seller, Purchaser and certain other parties, Seller has agreed, among other things, to cause all of the issued and outstanding shares of capital stock of (i) Compañia Cervecera de Coahuila, S.A. de C.V., a *sociedad anónima* de capital variable organized under the laws of Mexico (the "Company") and (ii) all of the issued and outstanding shares of capital stock of Servicios Modelo de Coahuila, S.A. de. C.V. a *sociedad anónima* de capital variable organized under the laws of Mexico ("Servicios"), in each case, to be sold to Purchaser or one of its designees.

WHEREAS, as contemplated by the Stock Purchase Agreement, Seller and Purchaser each desire to arrange for the provision of the Services in connection with the operation of the Company and the Piedras Negras Plant by Purchaser following the Closing Date and the expansion of the Piedras Negras Plant; and

WHEREAS, the execution and delivery of this Agreement is required by the Stock Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and of the representations, warranties, covenants and agreements set forth in this Agreement, and subject to and on the terms and conditions set forth in this Agreement, the Parties agree as follows:

ARTICLE I

INTERPRETATION

Section 1.01 Certain Defined Terms.

(a) Capitalized terms used but not otherwise defined herein or in any schedule attached hereto shall have the meanings given to them in the Stock Purchase Agreement.

(b) As used in this Agreement and in the schedules attached hereto:

"Affiliate" means, with respect to any Person, a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. "Control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by

contract or credit arrangement, as trustee or executor, or otherwise. For the avoidance of doubt, the Company is an Affiliate of Purchaser, and not an Affiliate of Seller.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Action" means any litigation, action, audit, suit, charge, binding arbitration or other legal, administrative, regulatory or judicial proceeding.

"Beer" has the meaning assigned to that term in the Interim Supply Agreement.

"Brewery Expansion Plan" means those specifications and plans developed by Purchaser with the technical support of Seller to expand the capacity of the Piedras Negras Plant to produce, bottle, package and temporarily store Beer by an additional ten million hectoliters per year over such capacity for the Piedras Negras Plant on the date hereof as described on Schedule 2.01(d).

"Brewery Expansion Services" has the meaning set forth in Section 2.01(d).

"Brewery Operations Services" has the meaning set forth in Section 2.01(a).

"Cartons" means boxes, baskets, trays, partitions, flat board, sash and similar packaging for Importer Product (as defined under the Sub-license Agreement).

"Change of Control" means (i) any Prohibited Owner or Person controlled by a Prohibited Owner becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that such Prohibited Owner or Person shall be deemed to have beneficial ownership of all shares that such Prohibited Owner or Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time) of all or any portion of any class of capital stock or equity interests (including partnership interests) then outstanding of Crown; provided, that, no such Prohibited Owner or Person shall be considered to be a beneficial owner of any class of capital stock or equity interests (including partnership interests) of Crown solely as a result of being a beneficial owner of Voting Stock of the Purchaser, (ii) any Prohibited Owner or Person controlled by a Prohibited Owner becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that such Prohibited Owner or Person shall be deemed to have beneficial ownership of all shares that such Prohibited Owner or Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time) of all or any portion of any class of capital stock or equity interests (including partnership interests) then outstanding of the Company; provided, that, no such Prohibited Owner or Person shall be considered to be a beneficial owner of any class of capital stock or equity interests (including partnership interests) of the Company solely as a result of being a beneficial owner of Voting Stock of the Purchaser, (iii) any Prohibited Owner or Person controlled by a Prohibited Owner becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the voting power of the total outstanding Voting Stock of the Purchaser; (iv) any Prohibited Owner or Person controlled by a Prohibited Owner becomes a member of Crown or shareholder of the Company, or (v) a sale of all or substantially all of the assets of the Company to any Prohibited Owner or Person controlled by a Prohibited Owner.

"Company" has the meaning set forth in the recitals to this Agreement.

"Confidential Information" has the meaning set forth in Section 2.12(a).

"Contract" means any binding contract, agreement, subcontract, lease, sublease, license, purchase order, work order, sales order, indenture, note, bond, instrument, mortgage, commitment, covenant or undertaking.

"Crown" means Crown Imports, LLC, a Delaware limited liability company, and any successor thereto.

"Disclosing Party" has the meaning set forth in Section 2.12(a).

"Disposition" means the sale, transfer, exclusive license or other disposition (including any sale and leaseback transaction) of any property (including stock, membership interest, partnership and other equity interests) by any Person of property owned by such Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Exchange Act" means the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder, in each case, as amended.

"Excluded Services" has the meaning set forth in Section 2.01.

"Force Majeure Events" has the meaning set forth in Section 6.02.

"Grupo Modelo" means Grupo Modelo, S.A.B. de C.V., a *sociedad anónima de capital variable* organized under the laws of Mexico.

"Grupo Modelo Entities" means, Grupo Modelo together with Affiliates and any successors thereto (other than the Company or Servicios).

"Inamex Equipment" means the fixtures and equipment owned by Inamex de Cerveza y Malta, S.A. de C.V. that are on or about the Plant Property (including, to the extent applicable, any buildings, cranes, tanks, compressors and pasteurizers) and any user manuals, brochures or other documentation or written information regarding, or designed to facilitate the use of, such fixtures and equipment.

"Interim Supply Agreement" means that certain Interim Supply Agreement, dated as of the date hereof, by and between Grupo Modelo and Crown.

"Invoices" has the meaning set forth in Section 3.02(b)(i).

"IT" means information technology.

"IT Service" means a service involving the management, maintenance, installation or utilization of computer hardware and software used in connection with the

operation of the business of the Company, including the management, maintenance, installation or utilization of IT Systems.

"IT Systems" means the computer systems, telephone systems, email and similar information storage or transfer systems, and computer systems for management, maintenance, operation and utilization of equipment and facilities located at the Piedras Negras Plant, utilizing computer hardware and software in connection with the operation of the business of the Company

"Knowing and Intentional" means that (i) a certain act or omission was voluntarily made with the understanding that the act or omission constitutes a breach of this Agreement, and (ii) such breach was not cured promptly after receipt of notice thereof (taking into account how long it reasonably takes to cure such breach). For the avoidance of doubt, "Knowing and Intentional" does not require the proof of *scienter*, bad faith or of any intent to cause any particular damage or harm.

"Membership Interest Purchase Agreement" means that certain Amended and Restated Membership Interest Purchase Agreement, dated as of February 13, 2013, by and among Seller, Purchaser, Constellation Beers Ltd. and Constellation Brands Beach Holdings, Inc.

"Migration" means the transfer of the Transferred Data from Seller's IT Systems to Purchaser's IT Systems (including SAP).

"Migration Plan" has the meaning set forth in Section 3.02(c).

"Out-of-Pocket Costs" has the meaning set forth in Section 3.02(a).

"Other G&A Services" has the meaning set forth in Section 2.01(c).

"Party" or "Parties" has the meaning set forth in the preamble to this Agreement.

"Pass-Through Charges" means the actual documented costs charged (without markup) by a Third-Party Service Provider for the Services provided.

"Performance Standard" has the meaning set forth in Section 2.07(a).

"Permitted Holders" means (a) Marilyn Sands, her descendants (whether by blood or adoption), her descendants' spouses, her siblings, the descendants of her siblings (whether by blood or adoption), Hudson Ansley, Lindsay Caleo, William Caleo, Courtney Winslow, or Andrew Stern, or the estate of any of the foregoing Persons, or The Sands Family Foundation, Inc., (b) trusts which are for the benefit of any combination of the Persons described in clause (a), or any trust for the benefit of any such trust, or (c) partnerships, limited liability companies or any other entities which are controlled by any combination of the Persons described in clause (a), the estate of any such Persons, a trust referred to in the foregoing clause (b), or an entity that satisfies the conditions of this clause (c).

"Permitted Purpose" has the meaning set forth in Section 2.12(a).

"Person" means any natural person, firm, partnership, association, corporation, company, trust, business trust, governmental authority or other entity.

"Piedras Negras Plant" means that certain brewery owned and operated by the Company and located in Piedras Negras, Coahuila, Mexico.

"Procurement and Logistics Transition Services" has the meaning set forth in Section 2.01(b).

"Product" has the meaning in the Interim Supply Agreement.

"Prohibited Owner" means Carlsberg Breweries A/S, Heineken Holding NV, SABMiller plc, Molson Coors Brewing Company, Miller Coors LLC, any of their respective controlled Affiliates and any successor of any of the foregoing, or any Person (other than a Subsidiary of Purchaser or a Permitted Holder) owning, distributing or brewing Beer brands of which 275 million Cases (as such term is defined in Section 1.1 of the Sublicense Agreement) or more were sold in the Territory during the calendar year ended immediately prior to the determination of whether such Person is a Prohibited Owner.

"Purchaser" has the meaning set forth in the preamble to this Agreement.

"Purchaser Indemnified Parties" has the meaning set forth in Section 5.02.

"Receiving Party" has the meaning set forth in Section 2.12(a).

"Sales Taxes" has the meaning set forth in Section 3.06(a).

"Seller" has the meaning set forth in the preamble to this Agreement.

"Service Coordinator" has the meaning set forth in Section 2.08.

"Services" has the meaning set forth in Section 2.01(e).

"Services Licensee" has the meaning set forth in Section 2.11(a).

"Settlement Date" has the meaning set forth in the GM Agreement.

"Stock Purchase Agreement" has the meaning set forth in the recitals to this Agreement.

"Sublicense Agreement" means that certain Amended and Restated Sub-license Agreement dated as of the date hereof by and between Constellation Beers Ltd. and Marcas Modelo, S.A. de C.V.

"Subsidiary" means, with respect to any Person, a corporation, partnership, joint venture, limited liability company, trust, estate or other Person of which (or in which), directly or indirectly, more than fifty percent (50%) of (i) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors, managers or others performing similar functions of such entity (irrespective of whether at the time capital stock of

any other class or classes of such entity shall or might have voting power upon the occurrence of any contingency), (ii) the interest in the capital or profits of such partnership, joint venture or limited liability company or other Person or (iii) the beneficial interest in such trust or estate is at the time owned by such first Person, or by such first Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"Supply Services" has the meaning set forth in Section 2.01(e).

"Taxes" means (i) all Mexican federal, state or local or foreign taxes, fees, assessments, levies or other governmental charges, or any liability for any of the foregoing together with all interest, penalties and additions imposed by any Governmental Authority.

"Territory" has the meaning assigned to that term in Section 1.1 of the Sublicense Agreement.

"Third Party" means any Person that is neither a Party nor an Affiliate of a Party.

"Third-Party Contract" has the meaning set forth in Section 2.03.

"Third-Party Service Provider" has the meaning set forth in Section 2.03.

"Transferred Data" shall mean the data generated by the Company in connection with the operation of the business of the Company and managed and maintained by Grupo Modelo on behalf of the Company or Servicios.

"Voting Stock" means (i) with respect to a corporation, the stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect or appoint at least a majority of the board of directors or trustees of such corporation (irrespective of whether or not at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency) and (ii) with respect to a partnership, limited liability company or business entity other than a corporation, the equity interests thereof.

"Yeast" has the meaning assigned to that term in Section 1.1 of the Sublicense Agreement.

Section 1.02 Other Definitional Provisions. Unless the express context otherwise requires:

(a) the word "day" means calendar day;

(b) the words "hereof", "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(c) the terms defined in the singular have a comparable meaning when used in the plural, and *vice versa*;

(d) the terms "Dollars" and "$" mean United States Dollars;

(e) references herein to a specific Section, Subsection or Schedule shall refer, respectively, to Sections, Subsections or Schedules of this Agreement;

(f) wherever the word "include", "includes" or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation";

(g) references herein to any gender include the other gender;

(h) references in this Agreement to the "United States" mean the United States of America and its territories and possessions;

(i) references in this Agreement to the "Mexico" mean Mexico and its territories and possessions;

(j) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply "if"; and

(k) except as otherwise specifically provided in this Agreement, any agreement, instrument or statute defined or referred to herein means such agreement, instrument or statute as from time to time amended, supplemented or modified, including (i) (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and (ii) all attachments thereto and instruments incorporated therein.

ARTICLE II

SERVICES

Section 2.01 Provision of Services. Subject to the terms and conditions of this Agreement, Seller shall provide, or cause to be provided, to Purchaser for the benefit of the Company and for the Piedras Negras Plant, Servicios:

(a) consulting services with respect to the management of the Piedras Negras Plant (the "Brewery Operations Services");

(b) consulting services in logistical matters, materials resource planning and advisory services on procurement matters in connection with the transitioning of the operations of the Piedras Negras Plant (together, the "Procurement and Logistics Transition Services");

(c) general administrative services currently provided at the Piedras Negras Plant or to Servicios, including information technology (IT Service), finance and regulatory compliance, services related to the testing of products and packaging in Crown's current development pipeline as of the date of the Stock Purchase Agreement at Grupo Modelo's Mexico City test brewery, human resources and promotional, retail and licensing services performed by GModelo Corporation as of the date of the Stock Purchase Agreement (it being agreed and understood Purchaser that shall use its reasonable best efforts, with the cooperation of Seller, to

identify and engage a Third Party to perform such promotional, retail and licensing services (or perform such services itself) as soon as practicable after the date hereof) (collectively, the "Other G&A Services");

(d) services relating to the Brewery Expansion Plan as more fully set forth on Schedule 2.01(d) (the "Brewery Expansion Services"); and

(e) the supply of aluminum cans, glass, malt, crowns and caps, hops, corn starch, can lids, Cartons and Yeast (the "Supply Services", and, together with the Brewery Operations Services, the Other G&A Services, the Procurement and Logistics Transition Services and the Brewery Expansion Services, the "Services");

provided, however, that under no circumstances shall the Services include services related to or connected with (i) capital expenditures (other than the consulting service required to be provided in connection with the Brewery Expansion Services), (ii) innovation (such services in clauses (i) and (ii), together, the "Excluded Services") and (iii) supply (other than with respect to Supply Services); provided, further, that other than with respect to the Brewery Expansion Services, the scope of the foregoing Services shall not be required to be greater than the scope of the services that were provided by any Grupo Modelo Entity to the Company in the ordinary course of business during the 12 months immediately prior to the Settlement Date, but such scope shall be at least equal to the scope of the services that were provided by any Grupo Modelo Entity to the Company in the ordinary course of business during the 12 months immediately prior to the Settlement Date. Notwithstanding anything to the contrary, under no circumstances shall Seller have the authority to make any decisions with respect to the operation and expansion of the Piedras Negras Plant or the Company.

Section 2.02 Additional Necessary Services. Seller agrees to provide any additional services other than the Excluded Services for the operation of the Company, upon Purchaser's reasonable request and at a price to be agreed upon after good faith negotiations between the Parties; provided, that the scope of any such additional services shall be no greater than the services that were provided by any Grupo Modelo Entity to the Company in the ordinary course of business during the 12 months immediately prior to the Settlement Date. Any such additional necessary services so provided by Seller shall constitute Services under this Agreement and be subject in all respect to the provisions of this Agreement.

Section 2.03 Third-Party Service Providers. Seller may satisfy its obligation to provide the applicable Services hereunder by causing (a) one or more of its Affiliates that is reasonably capable of performing the Services, to provide such Services or by subcontracting any of such Services or any portion thereof to such Affiliates (and Seller hereby fully and unconditionally guarantees the due and punctual performance of the Services by any such Affiliate), or (b) procuring any of such Services or portion thereof, from any Third Party (such a Third Party, a "Third-Party Service Provider") that is reasonably capable, in Purchaser's reasonable judgment, of performing the Services (provided that Bain Consulting, LLC and Accenture shall be deemed to be reasonably capable in Purchaser's reasonable judgment for purposes of this Section 2.03(b)); provided; however, notwithstanding the foregoing, Seller may not subcontract, or otherwise delegate its obligations to provide Services hereunder to any Third Party (other than an Affiliate of Seller) without the express written consent of Purchaser (with

such consent not to be unreasonably conditioned, withheld or delayed). Seller shall use commercially reasonable efforts to enforce the provisions of any Contract with a Third-Party Service Provider (a "Third-Party Contract") that is related to the Services provided for Purchaser's and the Company's benefit and upon Purchaser's or the Company's written request describing the default of the Third-Party Service Provider and supporting the demand of performance, compensation or indemnity, Seller shall use commercially reasonable efforts to pursue any required performance, warranty or indemnity under any Third-Party Contract on Purchaser's or the Company's behalf. Purchaser shall reimburse Seller for all Out-of-Pocket Costs incurred by Seller in connection with pursuing any such performance, warranty or indemnity on behalf of Purchaser. The above is without prejudice to any of Seller's or Purchaser's rights against the Third-Party Service Provider as a result of any Pass Through Warranty.

Section 2.04 Transitional Nature of Services. The Parties acknowledge the transitional nature of the Services. Accordingly, subject to Article VI, as promptly as practicable following the execution of this Agreement, Purchaser agrees to use commercially reasonable efforts to make a transition of each Service to its own internal organization or to obtain alternative Services from Third Parties on or prior to the following transition dates for each of the Services:

(a) with respect to Brewery Operations Services, the date that is six months from the date of this Agreement,

(b) with respect to Other G&A Services, the date that is 24 months from the date of this Agreement; provided, however, that at Purchaser's option, the provision of Other G&A Services pursuant to this Agreement may be extended to the date that is 36 months from the date of this Agreement;

(c) with respect to Procurement and Logistics Transition Services, the date that is 36 months from the date of this Agreement; provided, however, that, with respect to the materials resource planning services provided pursuant to Section 2.01(b), if the Company has been unable to obtain and install its own materials resource planning IT System prior to the date that is six months from the date of this Agreement, such services shall continue to be provided pursuant to this Agreement until the earlier of (i) the date on which the Company has obtained and fully installed such system and (ii) the date that is 36 months from the date of this Agreement;

(d) with respect to Brewery Expansion Services, the date that is 36 months from the date of this Agreement, provided that Purchaser shall use commercially reasonable efforts to meet each of the Target Completion Dates for the applicable Brewery Expansion Plan Milestone as set forth on Schedule 2.01(d); and

(e) with respect to each Supply Service, the date that is 36 months from the date of this Agreement.

It is agreed that, although Purchaser has agreed to use its commercially reasonable efforts as set forth herein, Seller shall have no right to receive damages or terminate this

Agreement arising out of any claim that Purchaser failed to use such efforts; provided that in no case shall Seller be required to provide any particular Services beyond the latest date for such particular Service as set forth in this Section 2.04. Without limiting the foregoing, Purchaser and Seller agree to cooperate in good faith to negotiate an agreement with the current supplier of Cartons, Gondi, S.A. de C.V., to supply Cartons directly to the Company on terms independent of any supply to Grupo Modelo and its subsidiaries.

Section 2.05 Exception to Obligation to Provide Services and Cooperation on Third Party Contracts. Should (a) the provision of a Service by Seller violate, increase or constitute a breach of Seller's obligations under any Law or any Contract to which Seller or any of its Affiliates is subject, or (b) any Contract or arrangement with any Third Party pursuant to which the Company received goods and services during the 12 months immediately prior to the Closing (a "Prior Contract"), due to the Closing (i) be terminated by a party to such Prior Contract (other than the Company), (ii) entitle a party to such Prior Contract (other than the Company) to increase, and such party does increase, the cost or obligation of, or reduce the benefit to, the Company under such Prior Contract, or (iii) result in the inability of the Company to obtain after the Closing Date, goods or services that are the subject of the Prior Contract, for a cost that is consistent with the cost the Company was required to incur prior to the Closing, then the Parties shall each use their respective reasonable best efforts to obtain (or cause to be obtained) all consents, agreements, waivers and licenses necessary for any such Service or such goods or services to be provided to the Company (it being understood that such reasonable best efforts, with respect to Purchaser, include, to the extent appropriate, attempting to obtain a consent, agreement, waiver or license from an existing Third-Party service provider of Purchaser), such that the Company will be able to operate in the same or better manner as it was operated during the 12 months immediately prior to the Settlement Date, provided that such requirement shall not be deemed to be a guaranty of any particular result. If any such consents, agreements, waivers and licenses cannot be obtained and Purchaser has not entered into a Contract for the provision of (1) all or a part of such Service with a Third-Party Service Provider on terms consistent with the terms of the applicable Prior Contract or (2) such goods or services, or a functional equivalent of either on consistent terms and conditions (including price and quality), then the Parties shall use their reasonable best efforts to arrange for alternative methods of delivering any goods or services such that the Company will be able to operate in the same or better manner as it was operated during the [****], provided that such requirement shall not be deemed to be a guaranty of any particular result. [****] The Parties shall continue to use their reasonable best efforts to obtain all consents, agreements, waivers or licenses (it being understood that such reasonable best efforts, with respect to Purchaser, includes, to the extent appropriate, attempting to obtain a consent, agreement, waiver or license from an existing Third-Party service provider of Purchaser), until they have been obtained or the parties have undertaken an alternative method of delivering any goods or services such that the Company will be able to operate in the same or better manner as it was operated during the 12 months immediately prior to the Settlement Date, as set forth in this Agreement.

[****]

Nothing in this Agreement, including this Section 2.05, is intended to, or shall, constitute a waiver or modification of the rights of ABI or the Buyer Parties under Sections 5.13 and 5.14 of the Stock Purchase Agreement.

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

Section 2.06 Duration of Services. Subject to Article VI, each of the Services shall be provided commencing from and after the Closing Date, unless a different date is specified as the commencement date on a Schedule hereto, and shall continue for the period set forth in Section 2.04 (with respect to a particular Service, the "Service Term"). For example, Purchaser may enter into a contract with a Third Party for the supply of Cartons and thereby terminate the Supply Service regarding the supply of Cartons hereunder; provided, however, that in the event of any such termination, all Supply Services, other than the Supply Service regarding the supply of Cartons and any other Supply Service that had been previously terminated in accordance with the terms of this Agreement, shall continue.

Section 2.07 Standard of Services.

(a) Except as otherwise agreed in writing between the Parties after the date of this Agreement and subject to Section 2.03, Seller shall provide the Services, or cause the Services to be provided, at a level of quality similar in all material respects to the manner in which the Services were performed and with the same standard of care as provided, in each such case, in connection with the operation of the Company and the Piedras Negras Plant during the 12 months immediately prior to the Settlement Date, such that the Piedras Negras Plant will continue to be operated in the same or better manner as it was operated during the 12 months immediately prior to the Settlement Date, provided that such performance standard shall not be deemed to be a guaranty of any particular result (the "Performance Standard"), provided further that the foregoing shall not modify, limit or amend Seller's obligation to provide the requirements of aluminum cans, glass, malt, crowns and caps, hops, corn starch, can lids, Cartons and Yeast , in accordance with Schedule 3.02(a)(i) of this Agreement. Under no circumstance shall Seller be obligated to meet any key performance indicators or other similar metrics; provided that Seller shall use commercially reasonable efforts to meet each of the Target Completion Dates for the applicable Brewery Expansion Plan Milestone as set forth on Schedule 2.01(d), it being agreed that although Seller has agreed to use such commercially reasonable efforts, Purchaser shall have no right to receive damages, equitable relief or terminate this Agreement arising out of any claim that Seller failed to use such efforts or any failure to meet any Brewery Expansion Plan Milestone.

(b) Notwithstanding anything to the contrary in this Agreement, in no event shall Seller or any of its Affiliates be liable for any Liability related to, arising out of or connected with any Services provided by a Third-Party Service Provider, other than in connection with a Knowing and Intentional act or omission by Seller or any of its Affiliates (including any Knowing and Intentional breach by Seller of its obligation to use commercially reasonable efforts to enforce any Third-Party Contract as set forth in Section 2.03). Purchaser acknowledges and agrees that this Agreement does not create a fiduciary relationship, partnership, joint venture or relationships of trust or agency between the Parties and that all Services are provided by Seller and any of its Affiliates as an independent contractor.

(c) Seller warrants and covenants that all Services to be performed by Seller shall be performed in compliance with all applicable laws, rules and regulations, including all laws, rules and regulations relating to alcoholic beverages.

Section 2.08 Service Coordinators. Each Party hereby appoints as of the date hereof the representative set forth on Schedule 2.08 attached hereto (each such representative, a

"Service Coordinator"), who shall be responsible for coordinating and managing the provision and receipt of the applicable Services and shall have authority to act on the applicable Party's behalf with respect to matters relating to this Agreement (unless and until a replacement representative is designated by the applicable party hereto by advance written notice to the other party hereto in accordance with Section 7.02).

Section 2.09 Cooperation. Purchaser shall, and shall cause its Affiliates to, use its commercially reasonable efforts to (a) cooperate with Seller and any Third-Party Service Provider with respect to the provision of any Service and (b) enable Seller and any Third-Party Service Provider (as the case may be) to provide the Services in accordance with this Agreement. Notwithstanding anything to the contrary, none of Purchaser, its Affiliates or any of its representatives shall take any action or omit to take any action that would interfere with or increase the cost or expense of Seller or any Third-Party Service Provider.

Section 2.10 Access. Purchaser shall (a) make available on a timely basis such information and materials as are reasonably requested by Seller or any Third-Party Service Provider to enable such Person to provide the Services and (b) provide to Seller or Third-Party Service Provider reasonable access to its premises and facilities during normal business hours and the equipment, systems, software and networks located therein, to the extent necessary for the purpose of providing the Services. Seller shall make available on a timely basis such information and materials as are reasonably requested by Purchaser in order to facilitate the receipt of Services.

Section 2.11 Ownership of Intellectual Property.

(a) Except as otherwise expressly provided in this Agreement or in any other Transaction Agreement, Seller, Purchaser, any Third-Party Service Provider and the respective Affiliates of each such Person shall retain all right, title and interest in and to their respective Intellectual Property and any and all improvements, modifications and derivative works thereof. No license or right, express or implied, is granted under this Agreement by Seller, Purchaser, any Third-Party Service Provider and the respective Affiliates of each such Person in or to their respective Intellectual Property, except that, solely to the extent required for the provision or receipt of the Services (as the case may be) in accordance with this Agreement, each of Seller and Purchaser, for itself and on behalf of the respective Affiliates thereof, hereby grants to the other (and the respective Affiliates thereof) a non-exclusive, revocable license during the term of this Agreement to such Intellectual Property that is provided by the granting Party to the other Party ("Services Licensee") in connection with this Agreement, but only to the extent and for the duration necessary for the Services Licensee to provide or receive the applicable Service as permitted by this Agreement (it being understood that such a license shall terminate or shall be deemed terminated immediately upon the expiration of the term hereof or earlier as provided in Article VI and is subject to any licenses granted by other Persons with respect to Intellectual Property not owned by Seller, Purchaser or the respective Affiliates of such Person).

(b) Subject to the limited license granted in Section 2.11(a), in the event that any Intellectual Property is created by Seller or a Third-Party Service Provider in the provision of any Services, all right, title and interest throughout the world in and to all such Intellectual Property shall vest solely in such Person unconditionally and immediately upon such Intellectual

Property having been developed, written or produced, unless the applicable parties otherwise agree in writing; provided, however, that any Intellectual Property specifically developed or commissioned for the benefit of Purchaser or the Company by Seller or a Third-Party Service Provider shall be owned by and become the sole property of Purchaser or the Company, as applicable.

(c) Except as otherwise expressly provided in this Agreement or in any other Transaction Agreement, (i) no Party (or any of its Affiliates) shall have by virtue of this Agreement any licenses with respect to any Intellectual Property (including software), hardware or facility of the other Party and (ii) Purchaser shall not have by virtue of this Agreement any licenses with respect to any Intellectual Property (including software) of any Third-Party Service Provider not granted to Purchaser pursuant to Section 2.11(b). All rights and licenses not expressly granted in this Agreement or in any other Transaction Agreement are expressly reserved by the relevant Party. Each Party shall from time to time execute any documents and take any other actions reasonably requested by the other Party to effectuate the intent of this Section 2.11.

Section 2.12 Confidentiality.

(a) During the term of this Agreement and thereafter, the Parties shall, and shall instruct their respective representatives to, maintain in confidence and not disclose the other Party's financial, technical, sales, marketing, development, personnel, and other information, records, or data, including, without limitation, customer lists, supplier lists, trade secrets, designs, product formulations, product specifications or any other proprietary or confidential information, however recorded or preserved, whether written or oral (any such information, "Confidential Information"). Each Party shall use the same degree of care, but no less than reasonable care, to protect the other Party's Confidential Information as it uses to protect its own Confidential Information of like nature. Unless otherwise authorized in any Contract between the Parties, any Party receiving any Confidential Information of the other Party (the "Receiving Party") may use Confidential Information only for the purposes of fulfilling its obligations under this Agreement (the "Permitted Purpose"). Any Receiving Party may disclose such Confidential Information only to its Representatives who have a need to know such information for the Permitted Purpose and who have been advised of the terms of this Section 2.12 and the Receiving Party shall be liable for any breach of these confidentiality provisions by such Persons; provided, however, that any Receiving Party may disclose such Confidential Information to the extent such Confidential Information is required to be disclosed by a Governmental Order, in which case the Receiving Party shall promptly notify, to the extent possible, the disclosing party (the "Disclosing Party"), and take all reasonable steps requested by the Disclosing Party and at the sole cost and expense of the Disclosing Party to assist in contesting such Governmental Order or in protecting the Disclosing Party's rights prior to disclosure, and in which case the Receiving Party shall only disclose such Confidential Information that it is advised by its outside legal counsel in writing that it is legally bound to disclose under such Governmental Order.

(b) Notwithstanding the foregoing, "Confidential Information" shall not include any information that the Receiving Party can demonstrate: (i) was publicly known at the time of disclosure to it, or has become publicly known through no act of the Receiving Party or its Representatives in breach of this Section 2.12; (ii) was rightfully received from a Third Party

without a duty of confidentiality or (iii) was developed by it independently without any reliance on the Confidential Information.

(c) Upon demand by the Disclosing Party at any time, or upon expiration or termination of this Agreement with respect to any Service, the Receiving Party agrees promptly to return or destroy, at the Disclosing Party's option, all Confidential Information. If such Confidential Information is destroyed, an authorized officer of the Receiving Party shall certify to such destruction in writing.

(d) The Parties agree that the Confidential Information of the Company relating to pricing or sales is competitively sensitive, and Seller shall establish, implement and maintain procedures and take such other steps that are reasonably necessary to prevent any disclosure of such information to its employees and those of its Affiliates who have direct responsibility for marketing, distributing or selling Beer (other than the Products) in the United States.

Section 2.13 Records. Seller shall use commercially reasonable efforts to create and maintain full and accurate books and records in connection with its provision of the Services, and, upon reasonable advance notice from Purchaser or the Company, shall make available for inspection and copy by such party's representatives and agents such books and records during reasonable business hours. Seller may, but shall not be required to, maintain records under this Agreement following the termination of this Agreement.

Section 2.14 Inamex Equipment. On or as soon as practicable after the date hereof, (i) Seller, at no cost to Purchaser and on an "as is", "where is" and "with all faults" basis only, shall assign, transfer and convey, or shall otherwise cause the assignment, transfer and conveyance of, all right, title and interest in and to the Inamex Equipment to Purchaser or its Affiliate and (ii) Purchaser or its Affiliate shall accept from Seller such right, title and interest in and to the Inamex Equipment. Each of Seller and Purchaser shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required in order to assign, transfer and convey the Inamex Equipment in accordance with this Section 2.14.

ARTICLE III

COMPENSATION

Section 3.01 Responsibility for Wages and Fees. For such time as any employees of Seller or any of its Affiliates are providing the Services to Purchaser under this Agreement, (a) such employees will remain employees of Seller or such Affiliate, as applicable, and shall not be deemed to be employees of Purchaser for any purpose, and (b) Seller or such Affiliate, as applicable, shall be solely responsible for the payment and provision of all wages, bonuses and commissions, employee benefits, including severance and worker's compensation, and the withholding and payment of applicable Taxes relating to such employment.

Section 3.02 Terms of Payment and Related Matters. Unless otherwise specified herein or in any Schedule hereto:

(a) As consideration for provision of the Services, Purchaser shall pay Seller (i) for the Supply Services, on the terms and conditions set forth in Schedule 3.02(a)(i), and (ii) for all other services listed in Section 2.01, on the terms and conditions set forth in Schedule 3.02(a)(ii). In addition, in the event that Seller or any of Seller's Affiliates (other than a Third-Party Service Provider) or any Third-Party Service Provider (other than an Affiliate of Seller) incurs reasonable and documented actual out-of-pocket expenses (without markup) in the provision of any Service, including, license fees and payments to Third-Party Service Providers or subcontractors, any of Seller's Affiliates (other than a Third-Party Services Provider) or any Third-Party Service Provider (other than an Affiliate of Seller) (such included expenses, collectively, "Out-of-Pocket Costs"), Purchaser shall reimburse Seller or Third-Party Service Provider (as the case may be) for all Out-of-Pocket Costs in accordance with the invoicing procedures set forth in Section 3.02(b). Notwithstanding anything set forth in this Agreement, Purchaser shall not be obligated to pay Seller any internally allocated costs of Seller, including wages, overhead or similar costs in respect of the Services. Furthermore, Seller may direct Purchaser in writing to make any payments of Out-of-Pocket Costs or Pass-Through Charges, directly to Third Parties.

(b)

(i) Seller shall provide Purchaser, in accordance with Section 7.02 of this Agreement, with monthly invoices ("Invoices"), which shall set forth in reasonable detail, with such supporting documentation as Purchaser may reasonably request with respect to Out-of-Pocket Costs and amounts payable under this Agreement; and

(ii) payments pursuant to this Agreement shall be made within 30 Business Days after the date of receipt of an Invoice by Purchaser from Seller.

(c) Migration and Migration Services. Purchaser and Seller shall, at the sole expense of Purchaser, promptly and cooperatively develop and implement a separation and related migration plan, including addressing all reasonable concerns by Seller regarding the transfer of data, including privacy, destruction or damage to data (collectively, the "Migration Plan") in order to achieve a Migration of the Transferred Data. Purchaser shall manage the development of the Migration Plan and the Migration pursuant to the Migration Plan and the Parties shall reasonably agree to a work plan for any such migration. Seller shall, at Purchaser's request and sole expense (which shall include the proportional salary and benefit expenses associated with Seller's employees but not other overhead), reasonably collaborate with Purchaser and provide Purchaser with assistance reasonably requested by Purchaser in connection with the development and implementation of the Migration Plan, it being understood that Seller shall not be obligated to take or to permit any action which reasonably threatens the integrity of the data of Seller or its Affiliates or the operation of its or its Affiliates' businesses. Purchaser shall consider in good faith Seller's comments to the Migration Plan. The Service Coordinators shall represent their principals in all matters associated with the Migration.

Section 3.03 Extension of Services. The Parties agree that neither Seller nor any Third-Party Service Provider shall be obligated to perform any Service upon the expiration of the applicable Service Term.

Section 3.04 Terminated Services. Upon termination or expiration of any or all Services pursuant to this Agreement, or upon the termination of this Agreement in its entirety, Seller shall have no further obligation to provide the applicable terminated Services and Purchaser will have no obligation to pay any future compensation or Out-of-Pocket Costs relating to such Services (other than for or in respect of (i) Services already provided in accordance with the terms of this Agreement and received by Purchaser prior to such termination and (ii) with respect to aluminum cans, glass, malt, crowns and caps, hops, can lids, Yeast, Cartons and corn starch that have, as of the termination of this Agreement, been shipped to the Company but have not delivered in its entirety in connection with the provision of the Supply Services).

Section 3.05 Invoice Disputes. In the event of an Invoice dispute, Purchaser shall use commercially reasonable efforts to deliver a written statement to Seller no later than seven (7) Business Days prior to the date payment is due on the disputed Invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed shall be deemed accepted and shall be paid, notwithstanding disputes on other items, within the period set forth in Section 3.02(b) (unless otherwise specified herein or in a schedule hereto); provided that nothing in this Section 3.05 shall prevent Purchaser from (a) disputing any Invoice that includes an incorrectly calculated fee or charge, for a period of one year after such Invoice was paid by Purchaser, or (b) prevent Purchaser from obtaining the rights set forth in Section 3.06 below. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing the Services in accordance with this Agreement pending resolution of any dispute.

Section 3.06 Audits. Seller shall make and keep books, records, receipts, work-papers, invoices and other information containing complete and accurate, data and other such particulars as may be reasonably necessary to verify all amounts charged to Purchaser under this Agreement, including all fees, Out-of-Pocket Costs, Pass-Through Charges and the prices, components and calculations thereof charged to Purchaser for Supply Services (including all Year 1 Base Prices for aluminum cans, glass, malt, crowns and caps, hops and corn starch and prices for can lids, Cartons and Yeast). Purchaser shall have the right to audit, or cause its representatives to audit, books, records, receipts, work-papers, invoices and other information during the term of this Agreement and for one (1) year thereafter, such audit to be conducted on reasonable advance notice and during normal business hours; provided that if the disclosure of any information would cause Seller to violate applicable Law, the terms of any confidentiality agreement or the confidentiality provision in any Contract, or impact any privilege, including the attorney/client privilege, Seller and Purchaser shall cooperate in good faith and take all such reasonable actions as are necessary to ensure that Purchaser is able to verify all amounts charged to Purchaser under this Agreement, including all fees, Out-of-Pocket Costs, Pass-Through Charges and the prices, components and calculations thereof charged to Purchaser for Supply Services (including all Year 1 Base Prices for aluminum cans, glass, malt, crowns and caps, hops and corn starch and prices for can lids, Cartons and Yeast). In the event that such audit reveals a discrepancy in the amounts paid by Purchaser to Seller from what was actually required to be paid, Seller shall refund Purchaser such overpayment, or Purchaser shall reimburse Seller for such underpayment, as applicable. In

the event that Purchaser's overpayment is in excess of five percent (5%) of the amount Purchaser was required to pay Seller, Seller shall also reimburse Purchaser for the cost of such audit. Seller shall respond in writing to Purchaser regarding any items of noncompliance identified by Purchaser during such inspections or audits within seven (7) days of Purchaser's notice thereof and shall use its reasonable best efforts to remedy any such items of noncompliance within fifteen (15) days of notice thereof.

Section 3.07 Taxes.

(a) Purchaser shall be responsible for all sales, transfer, goods or services Tax, value added Tax, or similar gross-receipts-based Tax (including any such Taxes that are required to be withheld), imposed against or on services provided ("Sales Taxes") by Seller, an Affiliate of Seller, or Third-Party Service Provider. Notwithstanding any provision to the contrary, all consideration paid under this Agreement is exclusive of Sales Taxes.

(b) Purchaser shall be entitled to deduct and withhold Taxes required by any applicable Law to be withheld on payments made pursuant to this Agreement. To the extent any amounts are so withheld, Purchaser shall promptly provide to such Seller, Affiliate of Seller, or Third-Party Service Provider evidence of such payment to such Governmental Authority. Seller, an Affiliate of Seller, or Third-Party Service Provider shall, prior to the date of any payment to be made pursuant to this Agreement, at the request of Purchaser, make commercially reasonable efforts to provide such Seller, Affiliate of Seller, or Third-Party Service Provider any certificate or other documentary evidence (x) required by Law or (y) which such Seller, Affiliate of Seller, or Third-Party Service Provider is entitled by Law to provide in order to reduce the amount of any Taxes that may be deducted or withheld from such payment and Purchaser agrees to accept and act in reliance on any such duly and properly executed certificate or other applicable documentary evidence.

Section 3.08 Other Matters.

(a) Notwithstanding anything herein to the contrary, Seller shall have no obligation to hire, assign or retain any employees, agents, contractors or other personnel in connection with this Agreement or the Services hereunder, other than as expressly set forth in Schedule 3.02(a)(ii).

(b) Seller warrants that the aluminum cans, glass, malt, crowns and caps, hops, corn starch, can lids, Cartons and Yeast supplied to Purchaser pursuant to the Supply Services, that are manufactured by Seller or an Affiliate of Seller, shall be merchantable at the time of delivery to Purchaser and shall permit Purchaser and its Affiliates to comply with their obligations under the Sublicense Agreement. With respect to aluminum cans, glass, malt, crowns and caps, hops, corn starch, can lids, Cartons and Yeast supplied to Purchaser pursuant to the Supply Services that are manufactured by a Third Party, Seller or its applicable Affiliate shall pass through to Purchaser or its applicable Affiliate all warranties provided by such Third Party with respect to such product (the "Pass Through Warranty").

ARTICLE IV

[RESERVED]

ARTICLE V

LIMITED LIABILITY AND INDEMNIFICATION

Section 5.01 Limitation on Liability. In no event shall Seller have any liability under any provision of this Agreement for any punitive, incidental, consequential, special or indirect damages, including (i) loss of future revenue or income, (ii) loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement (the losses specified in clauses (i) and (ii) of this Section 5.01, collectively, "Lost Profits"), or (iii) diminution of value or any damages based on any type of multiple, whether based on statute, contract, tort or otherwise, and whether or not arising from the other Party's sole, joint, or concurrent negligence, strict liability, criminal liability or other fault (such damages, collectively, "Consequential Damages"); provided, however, that the foregoing limitation on the Seller's liability for reasonably foreseeable Lost Profits shall not apply (provided that, for the avoidance of doubt, the foregoing limitation on Consequential Damages other than reasonably foreseeable Lost Profits shall nevertheless apply) to the extent Seller's liability relates to, arises out of or results from the failure to timely supply Yeast, cans, malt and glass in such quantities and of such quality as required by the terms of this Agreement. Notwithstanding anything herein to the contrary, Seller's aggregate liability under this Agreement, to the extent such liability relates to, arises out of or results from the failure to timely supply Yeast, cans, malt and glass in such quantities and of such quality as required by the terms of this Agreement, shall not exceed $250,000,000.00. In addition, the limitation on Consequential Damages set forth above shall not apply to any such damages awarded and paid to a third party.

Section 5.02 Indemnification. Subject to the limitations set forth in Section 5.01, Seller shall indemnify, defend and hold harmless Purchaser and its Affiliates and each of their respective Representatives (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses of Purchaser Indemnified Parties relating to, arising out of or resulting from the gross negligence or willful misconduct of Seller or its Affiliates or any Third Party that provides a Service to Purchaser pursuant to Section 2.03 in connection with the provision of, or failure to provide, any Services to Purchaser.

Section 5.03 No Duplicative Indemnification. No Party may obtain duplicative indemnification or other recovery for Losses and recoveries under one or more provisions of this Agreement, the Stock Purchase Agreement, and the Membership Interest Purchase Agreement, the Sublicense Agreement or any other agreement ancillary thereto. In no event shall any indemnification or other recovery for Losses hereunder be aggregated with, or otherwise subject to, any of the indemnification limits or conditions set forth in Article VII of the Stock Purchase Agreement.

Section 5.04 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER (a) MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE MATERIALS AND

SERVICES PROVIDED HEREUNDER, AND ALL SUCH MATERIALS AND SERVICES ARE PROVIDED "AS IS," AND (b) DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE SPECIFICALLY DISCLAIMED.

ARTICLE VI

TERMINATION

Section 6.01 Termination of Agreement. Subject to Section 6.03, this Agreement shall terminate in its entirety on the third anniversary of the Closing Date or earlier (a) by mutual written consent of the Parties, (b) upon the occurrence of a Change of Control, (c) by Purchaser at any time upon providing written notice of termination to Seller or (d) by Seller upon any assignment of all, but not less than all, rights, powers, privileges, duties or obligations under the Sublicense Agreement, other than any assignment to an Affiliate of Purchaser; provided that any payment obligations of Purchaser shall survive such termination, and the parties obligations' under the last sentence of Section 2.11, Section 2.12, Section 3.04, Article V, Article VI and Article VII shall survive such termination.

Section 6.02 Force Majeure. The obligations of Seller and any Third-Party Service Provider under this Agreement with respect to any Service shall be suspended during the period and to the extent that Seller or Third-Party Service Provider is prevented or materially hindered from providing such Service, or Purchaser is prevented or materially hindered from receiving such Service, due to any of the following causes beyond such Persons reasonable control (such causes, "Force Majeure Events"): (a) acts of God, (b) flood, fire or explosion, (c) war, invasion, riot or other civil unrest, (d) Governmental Order or Law, (e) actions, embargoes or blockades in effect on or after the date of this Agreement, (f) action by any Governmental Authority, (g) national or regional emergency, (h) strikes, labor stoppages or slowdowns or other industrial disturbances, (i) shortage of adequate power or transportation facilities, (j) adverse weather conditions or (k) any other event which is beyond the reasonable control of such party. The Person suffering a Force Majeure Event shall give notice of suspension as soon as reasonably practicable to the other party stating the date and extent of such suspension and the cause thereof, and Seller or Third-Party Service Provider (as the case may be) shall resume the performance of such Persons obligations as soon as reasonably practicable after the Force Majeure Event ends. None of Purchaser, Seller or any Third-Party Service Provider shall be liable for the nonperformance or delay in performance of its respective obligations under this Agreement when such failure is due to a Force Majeure Event. From and during the occurrence of a Force Majeure Event, Seller and any Third-Party Service Provider (as applicable) may, but shall not be under any obligation to replace the affected Services.

Section 6.03 Effects of Termination; Survival. Nothing in this Article VI will relieve any Party from its liability for any breach or violation of this Agreement prior to any termination hereof. The provisions of any payment obligations of Purchaser shall survive such termination, and the Parties' obligations under the last sentence of Section 2.11, Section 2.12, Section 3.04, Article V, Article VI and Article VII shall survive such termination.

Section 6.04 Return of Information. If this Agreement or a particular Service is terminated, upon request, each Party shall promptly return to the other Party all information furnished by such other party in connection with each terminated Service (including all copies or materials developed from such information, if any, thereof), except to the extent the Parties are required or permitted to retain pursuant to applicable Law.

ARTICLE VII

GENERAL PROVISIONS

Section 7.01 Treatment of Confidential Information. To the extent not inconsistent with Section 2.12, all information disclosed pursuant to this Agreement by either Party or to which either Party or its Affiliates or its or their representatives otherwise has access as a result of this Agreement or the performance of the Services shall be subject in all respects to Section 9.1 of the Stock Purchase Agreement.

Section 7.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (return receipt requested), (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient or on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid to the respective Parties at the following respective addresses (or at such other address for a party hereto as shall be specified in a notice given in accordance with this Section 7.02):

If to Seller:

Anheuser-Busch InBev SA/NV
Brouwerijplein 1
Leuven 3000
Belgium
Attention: Chief Legal Officer & Company Secretary
Telephone: +32 16 276942
Fax: +32 16 506699

with a copy to (which shall not constitute notice):

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: George J. Sampas
Krishna Veeraraghavan
Telephone: +1-212-558-4000
Facsimile: +1-212-558-3588

If to Purchaser:

Constellation Brands, Inc.
207 High Point Drive, Building 100
Victor, New York 14564
Attention: General Counsel
Telephone: +1 (585) 678-7266
Facsimile: +1 (585) 678-7103

with a copy to (which shall not constitute notice):

Nixon Peabody LLP
1300 Clinton Square
Rochester, NY
Attention: James O. Bourdeau
Telephone: +1 (585) 263-1000
Facsimile: +1 (585) 263-1600

Section 7.03 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties hereto as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible. Nothing in this Section 7.03 shall affect a Party's right to terminate this Agreement pursuant to Article VI.

Section 7.04 Entire Agreement. Except as expressly set forth herein, this Agreement (and the Schedules attached hereto), the Stock Purchase Agreement, the MIPA Agreement and the Sublicense Agreement, constitute the entire understanding of the Parties with respect to the transactions contemplated hereby, and supersede all prior and contemporaneous agreements and understandings, written and oral, among the Parties hereto with respect to the subject matter hereof. To the extent there is a conflict between this Agreement and the Stock Purchase Agreement, the terms of the Stock Purchase Agreement will control.

Section 7.05 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns. Subject to Section 2.03 of this Agreement, no Party to this Agreement may assign any of its rights or delegate any of its obligations under this Agreement, by operation of Law or otherwise, without the prior written consent of the other Party; provided, however, in the case of an assignment of Purchaser's rights and/or delegation of Purchaser's obligations to any Person (other than a Prohibited Owner), such consent shall not unreasonably be withheld by Seller, and any attempted or purported assignment in violation of this Section 7.05 shall be null and void;

provided, further, that any obligation of any Party to the other Party under this Agreement, which obligation is performed, satisfied or fulfilled completely by an Affiliate of such first Party, shall be deemed to have been performed, satisfied or fulfilled by such Party.

Section 7.06 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Section 7.07 Amendment; Waiver. No provision of this Agreement may be amended, supplemented or modified except by a written instrument signed by all of the Parties thereto. No provision of this Agreement may be waived except by a written instrument signed by the party against whom the waiver is to be effective. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 7.08 Governing Law. This Agreement shall be governed by, enforced pursuant with and construed in accordance with the laws of New York, without regard to the conflict of laws principles, to the extent such principles are not mandatorily applicable by statute and would require or permit the application of the laws of another jurisdiction.

Section 7.09 Consent to Jurisdiction/Venue. Each Party hereby waives, to the extent permitted by Law, all jurisdictional defenses, objections as to venue and any rights to appeal, review or nullify such award by any court or tribunal. Each of the Parties hereby submits to the exclusive jurisdiction of any court of competent jurisdiction in any Federal or State Court in the City of New York, County of New York, (the "Specified Court") in any action, suit or proceeding arising out of or relating to this Agreement and the non-exclusive jurisdiction of the Specified Court with respect to the enforcement of any award thereunder.

Section 7.10 Equitable Relief. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Parties agrees that, without the necessity of posting bonds or other undertaking, the other Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which such Party is entitled at Law or in equity. In the event that any Action is brought in equity to enforce the provisions of this Agreement, no Party shall allege, and each Party hereby waives the defense or counterclaim, that there is an adequate remedy at Law. The Parties further agree that (a) by seeking any remedy provided for in this Section 7.10, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party and (b) nothing contained in this Section 7.10 shall require any party to institute any action for (or limit any Party's right to institute any action for) specific performance under this Section 7.10 before exercising any other right under this Agreement.

Section 7.11 Further Assurances. Each Party shall take, or cause to be taken, any and all reasonable actions, including the execution, acknowledgment, filing and delivery of any and all documents and instruments that any other Party may reasonably request in order to effect the intent and purpose of this Agreement and the transactions contemplated hereby.

Section 7.12 Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other means of electronic transmission shall be as effective as delivery of a manually executed counterpart of any such Agreement.

Section 7.13 Headings. The heading references herein and the table of contents hereof are for convenience purposes only, and shall not be deemed to limit or affect any of the provisions hereof.

Section 7.14 No Set-Off. Neither Seller nor any of their respective Affiliates, on the one hand, nor Purchaser nor any of their respective Affiliates, on the other hand, shall have any set-off or other similar rights with respect to (a) any amounts due or owing (or to become due and owing) by such party or its Affiliates pursuant to this Agreement against (b) any other amounts due or owing or claimed to be due or owing to such party or its Affiliates pursuant to this Agreement or any other Contract.

Section 7.15 Expenses. Except as otherwise provided in this Agreement, any costs, expenses or charges incurred by any of the Parties hereto shall be borne by the party incurring such cost, expense or charge.

[*Signature Page follows*]

IN WITNESS WHEREOF, this Agreement has been duly executed by the authorized representative of each signatory set forth below as of the date first written above.

ANHEUSER-BUSCH INBEV SA/NV

By: _____
Name:
Title:

By: _____
Name:
Title:

CONSTELLATION BRANDS, INC.

By: _____
Name:
Title:

SCHEDULE 2.01(d)

No.	Brewery Expansion Services
1.	Advise on the design and formulation of the business plan to expand the capacity of the Piedras Negras Plant to produce, bottle, package and temporarily store Beer (as defined in the Interim Supply Agreement) by an additional ten million hectoliters per year over such capacity for the Piedras Negras Plant on the date of the Agreement (including construction of a brewhouse, packaging hall and warehouse) (the "Project")
2.	Provide advice in connection with identifying, preparing requests for proposals and bidding, retaining, and negotiating contracts with the architect, construction manager, general contractor, civil engineer, environmental engineer, equipment suppliers and any other professionals or consultants necessary or useful for the Project ("Suppliers and Consultants")
3.	Provide advice in connection with the architectural and construction plans, drawings, specifications, integration plan, engineering, logistics, utilities, calculations, proposals from Suppliers and Consultants, and/or other information required to complete the Project and provide timely feedback and responses to Purchaser and the Company regarding such review
4.	Provide advice in connection with the preparation and review of the budget for the Project (the "Project Budget"), as well as updates to the Project Budget, including line items, qualifications, assumptions, exclusions, allowances, general conditions, insurance, contingencies, fees, and bonding costs, if any
5.	Provide advice in connection with obtaining all necessary environmental reviews, zoning and other approvals, consents, permits, certificates, licenses, variances, easements, and authorizations required for the development of the Project (the "Approvals")
6.	Consult with and advise on matters relating to the performance of the Suppliers and Consultants with respect to their contractual obligations
7.	Attend Project meetings as requested by Purchaser or the Company
8.	Provide advice in connection with any progress reports or other submissions prepared monthly and submitted by the Suppliers and Consultants and consult with and provide timely feedback and responses to Purchaser and the Company regarding such review
9.	At Purchaser's or the Company's request, consult with and advise Purchaser and the Company with respect to the progress of the Project and the performance of the Suppliers and Consultants with respect to their contractual obligations
10.	Provide consultation as necessary or desirable, in the discretion of the Purchaser or the Company, regarding factual matters in any dispute resolution between the Company and any of the Suppliers and Consultants, (but not actively participate in any such dispute or provide legal advice).

No.	Brewery Expansion Plan Milestones	Target Completion Date
11.	Prepare Brewery Expansion Plan	6 months from date of Agreement
12.	Retain and negotiate contract with Architect	6 months from date of Agreement
13.	Retain and negotiate contract with General Contractor	6 months from date of Agreement

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14.	Retain and negotiate contract with Design and Engineering Firms	6 months from date of Agreement
15.	Prepare Project Budget	6 months from date of Agreement
16.	Obtain all Approvals for the Project	12 months from date of Agreement
17.	Begin construction of the Project	12 months from date of Agreement
18.	Warehouse construction and equipment installation completed	24 months from date of Agreement
19.	Brewhouse construction and equipment installation completed	30 months from date of Agreement
20.	Substantial Completion of the Project	30 months from date of Agreement
21.	Final Completion of the Project	36 months from date of Agreement

SCHEDULE 2.08

SERVICE COORDINATORS

1. Seller Service Coordinator: [●][1]

2. Purchaser Service Coordinator: [REDACTED]*

[1] The services coordinator will be an employee of ABI or an Affiliate thereof but not from ABI's North American zone (which for the avoidance of doubt shall not exclude any employee of the Grupo Modelo or its Subsidiaries), will hold a bachelor's degree, speak fluent English and have a minimum of seven years of beer-industry experience, including operational and support functions.

* Confidential Information redacted pursuant to the Stipulated Protective Order.

Schedule 3.02(a)(i)
SUPPLY SERVICES

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

Schedule 3.02(a)(ii)

Fee Schedule

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

ILLUSTRATIVE EXAMPLE – TO BE CONFIRMED BY THE PARTIES

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

EXECUTION COPY

AMENDED AND RESTATED

MEMBERSHIP INTEREST PURCHASE AGREEMENT

among

CONSTELLATION BEERS LTD.,

CONSTELLATION BRANDS BEACH HOLDINGS, INC.,

CONSTELLATION BRANDS, INC.,

and

ANHEUSER-BUSCH INBEV SA/NV

February 13, 2013

TABLE OF CONTENTS

EXHIBITS

SCHEDULES

AMENDED AND RESTATED
MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS AMENDED AND RESTATED MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "**Agreement**") is made and entered into as of February 13, 2013, by and among **Constellation Beers Ltd.**, a Maryland corporation ("**Constellation Beers**"), **Constellation Brands Beach Holdings, Inc.**, a Delaware corporation ("**CBBH**"), **Constellation Brands, Inc.**, a Delaware corporation ("**CBI**") and **Anheuser-Busch InBev SA/NV**, a Belgian corporation ("**ABI**"), and amends and restates that certain Membership Interest Purchase Agreement, dated as of June 28, 2012, by and among the parties hereto (the "**Original Purchase Agreement**").

W I T N E S S E T H

WHEREAS, on July 17, 2006, Diblo, S.A. de C.V., a Mexican *sociedad anónima de capital variable* ("**Diblo**"), and Constellation Beers (then known as Barton Beers, Ltd.) agreed to establish and engage in a joint venture, Crown Imports LLC, a Delaware limited liability company (the "**Importer**"), for the principal purpose of importing, marketing and selling beer packaged in containers bearing one or more of the trademarks belonging to Grupo Modelo, S.A.B. de C. V., a *sociedad anónima bursátil de capital variable* organized under the laws of Mexico ("**Grupo Modelo**"), or one of its Affiliates;

WHEREAS, GModelo Corporation, a Delaware corporation and a Subsidiary of Grupo Modelo ("**Seller**"), and Constellation Beers are parties to that certain Amended and Restated Limited Liability Company Agreement of Crown Imports LLC, dated as of January 2, 2007 (as amended through June 28, 2012, the "**LLC Agreement**");

WHEREAS, Seller holds fifty percent (50%) of the limited liability company membership interests (the "**LLC Interests**") of the Importer (the limited liability company membership interests owned by Seller, the "**Importer Interest**");

WHEREAS, on June 28, 2012, ABI and certain of its affiliated entities, Grupo Modelo, Diblo and Dirección de Fabricas, S.A. de C.V., a Mexican *sociedad anónima de capital variable* partially owned but not controlled by Diblo ("**Dijon**"), as applicable, have entered into certain transaction agreements pursuant to which (i) Diblo will be merged with and into Grupo Modelo, and simultaneously therewith, Dijon will be merged with and into Grupo Modelo, with Grupo Modelo continuing as the surviving company of these mergers, and (ii) a Subsidiary of ABI will commence a public tender offer in Mexico to purchase all of the outstanding shares of capital stock of Grupo Modelo not owned directly or indirectly by ABI (the "**Mandatory Tender Offer**"), in each case on the terms and subject to the conditions set forth therein (collectively, the "**GM Transaction**");

WHEREAS, on June 28, 2012, ABI, CBI, Constellation Beers and CBBH entered into the Original Purchase Agreement;

WHEREAS, on the date hereof, ABI and CBI have entered into that certain Stock Purchase Agreement (the "**Brewery SPA**"), pursuant to which CBI agreed to purchase all of the

issued and outstanding shares of capital stock of Compañia Cervecera de Coahuila, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico, and all of the issued and outstanding shares of capital stock of Servicios Modelo de Coahuila, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico (such transactions, collectively, the "**Brewery Transaction**");

WHEREAS, in connection with and contingent on the consummation of the transactions contemplated herein, ABI and CBI shall consummate the Brewery Transaction immediately following the consummation of the transactions contemplated herein;

WHEREAS, in connection with and contingent on the consummation of the GM Transaction Closing, ABI desires to cause Seller to divest the Importer Interest simultaneously with the GM Transaction Closing; and

WHEREAS, CBI desires to cause Constellation Beers and CBBH to purchase the Importer Interest from Seller, and ABI desires to cause Seller to sell the Importer Interest to Constellation Beers and CBBH, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises, mutual covenants, agreements, representations and warranties contained in this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. As used in this Agreement, the following terms have the meanings set forth below:

"**ABI**" has the meaning set forth in the Preamble to this Agreement.

"**ABI Guaranteed Obligations**" has the meaning set forth in **Section 6.1**.

"**ABI Objection**" has the meaning set forth in **Section 2.3(b)**.

"**Affiliate**" of any Person means any other Person which, directly or indirectly, controls or is controlled by that Person, or is under common control with that Person. For purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; **provided**, **however**, that unless and until the GM Transaction Closing has occurred, none of Grupo Modelo, Seller or any of their respective controlled Affiliates shall be considered Affiliates of ABI or any of its Subsidiaries (excluding Grupo Modelo, Seller or any of their controlled Affiliates) and none of ABI or any of its Subsidiaries (excluding Grupo Modelo, Seller or any of their controlled Affiliates) shall be considered Affiliates of Grupo Modelo, Seller or any of their Affiliates.

"**Agreement**" has the meaning set forth in the Preamble to this Agreement.

"**Alcoholic Beverage Authorities**" means the United States Alcohol and Tobacco Tax and Trade Bureau, as well as the applicable state, local, municipal, provincial, foreign, and other Governmental Authorities that regulate the production and sale of alcoholic beverage products.

"**Alternative Purchaser**" has the meaning set forth in **Section 12.5(b)**.

"**Bank of America**" has the meaning set forth in **Section 5.10**.

"**Breach**" means, with respect to any agreement, any inaccuracy in, or breach or violation of, or default under, or failure to perform or comply with, any representation, warranty, covenant, obligation or other provision of such agreement.

"**Brewery SPA**" has the meaning set forth in the Recitals to this Agreement.

"**Brewery Transaction**" has the meaning set forth in the Recitals to this Agreement.

"**Business Day**" means any day, other than Saturday, Sunday or a day on which banking institutions in New York, New York, Chicago, Illinois, Mexico City, Mexico or Brussels, Belgium are authorized or obligated by Law to close.

"**Buyer**" means individually, and "**Buyers**" means collectively, each of Constellation Beers and CBBH.

"**Buyer Party**" means individually, and "**Buyer Parties**" means collectively, each of Constellation Beers, CBBH, and CBI.

"**CBBH**" has the meaning set forth in the Preamble to this Agreement.

"**CBI**" has the meaning set forth in the Preamble to this Agreement.

"**CBI Guaranteed Obligations**" has the meaning set forth in **Section 7.1.**

"**CBI Interest**" has the meaning set forth in **Section 12.5(b)**.

"**Closing**" has the meaning set forth in **Section 3.1**.

"**Closing Date**" has the meaning set forth in **Section 3.1**.

"**Closing Statement**" means the statement that sets forth the Distribution Amount, prepared, or caused to be prepared, by CBI in accordance with **Section 2.3(a)**.

"**Code**" means the Internal Revenue Code of 1986, and rules and regulations promulgated pursuant thereto, each as amended and in effect from time to time.

"**Confidentiality Agreement**" has the meaning set forth in **Section 14.4**.

"**Consent**" means any consent, order, approval, ratification, waiver or other authorization issued or granted by any Governmental Authority or any other Person, or any notice, registration or filing delivered to or filed with any Governmental Authority or any other Person, including any Permit.

"**Constellation Beers**" has the meaning set forth in the Preamble to this Agreement.

"**Contract**" means any agreement, contract, instrument, commitment, covenant, promissory note, bond, indenture, insurance policy, deed, lease, sublease, license, purchase order, sales order or other obligation or arrangement (whether written or oral) that is legally binding.

"**CPA Firm**" has the meaning set forth in **Section 2.3(c)**.

"**Damages**" means any and all losses, charges, damages, Liabilities, obligations, judgments, settlements, Taxes, fines, penalties, awards, costs and expenses including but not limited to reasonable attorneys' fees, whether or not resulting from third party claims.

"**Diblo**" has the meaning set forth in the Recitals to this Agreement.

"**Dijon**" has the meaning set forth in the Recitals to this Agreement.

"**Distribution Amount**" means an amount equal to the product of (i) the amount of Available Cash (as defined in, and calculated in accordance with, Section 10.1 of the LLC Agreement (as in effect as of June 28, 2012)) required pursuant to Section 10.2(a) of the LLC Agreement (as in effect as of June 28, 2012) to be distributed to Seller and Constellation Beers in accordance with their respective Percentage Interests (as defined in the LLC Agreement as in effect as of June 28, 2012 and which for each such member shall be equal to 50% for purposes of this definition) at the end of the calendar month in which the Closing occurs (assuming, for purposes of this definition, that Seller is a Member of the Importer at the time of such distribution) and (ii) the quotient of (A) the number of days elapsed from the beginning of the calendar month in which the Closing occurs until (and including) the Closing Date and (B) the number of days in the calendar month in which the Closing occurs. For the avoidance of doubt, in no event will the Distribution Amount be less than zero.

"**Drag-Along Notice**" has the meaning set forth in **Section 12.5(b)(i)**.

"**Drag-Along Right**" has the meaning set forth in **Section 12.5(b)**.

"**EBIT**" means, for Importer or any other Person for any period, the earnings of the Importer or such other Person for such period before interest and taxes, computed in accordance with generally accepted accounting principles in the United States of America, consistently applied, and converted to United States dollars.

"**Entire Importer Interest**" has the meaning set forth in **Section 12.5(b)**.

"**Extrade**" means Extrade II, S.A. de C.V., a sociedad anónima de capital variable organized under the Laws of Mexico.

"**Final Closing Statement**" has the meaning set forth in **Section 2.3(c)**.

"**Final Distribution Amount**" has the meaning set forth in **Section 2.3(c)**.

"**Financing**" has the meaning set forth in **Section 5.10**.

"**Financing Commitment**" has the meaning set forth in **Section 5.10**.

"**GM Transaction**" has the meaning set forth in the Recitals to this Agreement.

"**GM Transaction Agreement**" means that certain transaction agreement, dated as June 28, 2012, and as it may be amended from time to time, by and among Grupo Modelo, Diblo, ABI and certain affiliated entities of ABI.

"**GM Transaction Closing**" means the Settlement Date (as defined in the GM Transaction Agreement).

"**GM Transaction Closing Notice**" has the meaning set forth in **Section 3.1**.

"**Governmental Authority**" means any federal, national, state, provincial, municipal or local government, administrative or legislative body, governmental or regulatory agency or authority, bureau, office, commission, court, department or other instrumentality or other governmental entity of any country.

"**Grupo Modelo**" has the meaning set forth in the Recitals to this Agreement.

"**Importer**" has the meaning set forth in the Recitals to this Agreement.

"**Importer Interest**" has the meaning set forth in the Recitals to this Agreement.

"**Importer Office Lease**" has the meaning set forth in **Section 9.8**.

"**Indemnified Party**" has the meaning set forth in **Section 12.3**.

"**Indemnifying Party**" has the meaning set forth in **Section 12.3**.

"**Interim Supply Agreement**" means that certain Interim Supply Agreement by and between Supplier and Importer, and to be executed at the Closing, substantially in the form attached hereto as **Exhibit A**.

"**JPMorgan**" has the meaning set forth in **Section 5.10**.

"**Knowledge**" means, with respect to the Buyer Parties, Robert Sands, Richard Sands, Paul Hetterich, Robert Ryder, Susan Gardner, David Klein and Thomas Mullin, in each case, after reasonably prudent inquiry.

"**Law**" means (a) any constitution, statute, law, code, ordinance, regulation, treaty, rule, common law, policy or interpretation enacted, published or promulgated by any Governmental Authority, including, but not limited to, laws and regulations applicable to the production and

sale of alcoholic beverage products, "dram shop" laws, safety laws or other similar regulations; and (b) with respect to a particular Person, the terms of any Order or Permit binding upon such Person or its assets or properties.

"**Liability**" means any liability, indebtedness, commitment or other obligation of any kind (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due, or otherwise).

"**Lien**" means any charge, claim, mortgage, lease, sublease, occupancy agreement or similar Contract, tenancy, right-of-way, easement, collateral assignment, restrictive covenant, encroachment, Order, community property interest, equitable interest, security interest, lien (statutory or otherwise), pledge, hypothecation, option, right of first refusal or other similar restriction, limitation, exception or encumbrance, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"**LLC Agreement**" has the meaning set forth in the Recitals to this Agreement.

"**LLC Interests**" has the meaning set forth in the Recitals to this Agreement.

"**Mandatory Tender Offer**" has the meaning set forth in the Recitals to this Agreement.

"**Marcas Modelo**" means Marcas Modelo, S.A. de C.V., a sociedad anónima de capital variable organized under the Laws of Mexico.

"**Members**" has the meaning set forth in the LLC Agreement as in effect on June 28, 2012.

"**Membership Interest Assignment**" means the assignment of membership interest to be executed at the Closing, substantially in the form attached hereto as **Exhibit B**, transferring the Importer Interest to Constellation Beers, CBBH or CBI, as applicable.

"**Modelo Group**" means Grupo Modelo and all Persons that, now or in the future, are related to Grupo Modelo by virtue of Grupo Modelo's direct or indirect share ownership, and any Affiliates thereof, and ABI, Anheuser-Busch Companies, LLC, Anheuser-Busch International, Inc., Anheuser-Busch International Holdings, Inc., and any of their respective Affiliates.

"**Modelo Group Obligor**" has the meaning set forth in **Section 6.1**.

"**Order**" means any order, injunction (whether temporary, preliminary or permanent), ruling, decree (including any consent decree), writ, subpoena, verdict, charge, judgment, assessment or other decision entered, issued, made or rendered by any Governmental Authority or by any arbitrator.

"**Organizational Documents**" means, with respect to a particular Person, (a) if such Person is a corporation, its certificate or articles of incorporation, organization or formation and its by-laws; (b) if such Person is a general partnership, its partnership agreement and any statement of partnership; (c) if such Person is a limited partnership, its certificate of limited

partnership and its limited partnership agreement; (d) if such Person is a limited liability company, its certificate or articles of formation or organization and limited liability company or operating agreement; (e) any other charter or similar document adopted or filed in connection with the creation, formation or organization of such Person; and (f) any amendment to any of the foregoing.

"**Original Purchase Agreement**" has the meaning set forth in the Preamble to this Agreement.

"**Participatory Transaction**" has the meaning set forth in **Section 12.5(b)(i)**.

"**Participatory Transaction Amount**" means (i) if the Participatory Transaction involves only the sale of the Entire Importer Interest and the Shares (as defined in the Brewery SPA) and the transactions contemplated by the exhibits and documents ancillary to this Agreement and the Brewery SPA, and there are no other transactions occurring concurrently therewith or occurring subsequent thereto but contemplated thereby, an amount equal to twenty-eight percent (28%) of the entire consideration, converted into United States dollars, received by ABI and its Affiliates in such Participatory Transaction, and (ii) if the Participatory Transaction is different than in clause (i), an amount equal to the product of (a) the fraction, the numerator of which is EBIT of the Importer for the twelve (12) month period immediately prior to the date of the definitive agreement or agreements for the transaction that includes a Participatory Transaction are executed, and the denominator of which is EBIT for the Importer and all other businesses, assets, properties and/or entities proposed to be sold in such Participatory Transaction and other transactions occurring concurrently therewith or occurring subsequent thereto but contemplated thereby, it being understood and agreed that such amounts shall not include on-going payments for services provided after such transaction or transactions are consummated, provided the terms thereof have been set at arms-length terms, for the twelve (12) month period immediately prior to the date of the definitive agreement or agreements for such transaction, including the Participatory Transaction, are executed, multiplied by (b) the entire consideration, converted into United States dollars, received by ABI and its Affiliates in such Participatory Transaction and other transactions occurring concurrently therewith or occurring subsequent thereto but contemplated thereby, multiplied by (c) 0.5, it being understood and agreed that such amounts shall not include on-going payments for services provided after such transaction or transactions are consummated, provided the terms thereof have been set at arms-length terms.

"**Permit**" means any permit, license, exemption, variance, registration, security clearance or other authorization issued or granted by any Governmental Authority.

"**Permitted Liens**" means (i) Liens for Taxes, assessments and other governmental charges not yet due and payable or due but not delinquent or being contested in good faith by appropriate proceedings; (ii) Liens arising under the LLC Agreement; (iii) restrictions on transfer imposed by applicable securities laws or state corporation, limited liability company or partnership laws; (iv) Liens arising under this Agreement or the other Transaction Documents; and (v) Liens created by the Buyer Parties or any of their Affiliates.

"**Person**" means any individual, firm, company, general partnership, limited partnership, limited liability partnership, joint venture, association, corporation, limited liability company, trust, business trust, estate, Governmental Authority or other entity.

"**Proceeding**" means any action, claim, complaint, charge, arbitration, audit, hearing, investigation, inquiry, suit, litigation or other proceeding (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"**Products**" has the meaning set forth in the Interim Supply Agreement.

"**Purchase Price**" has the meaning set forth in **Section 2.2(a)**.

"**Remedial Action**" has the meaning set forth in **Section 9.1**.

"**Restrictive Terms**" has the meaning set forth in **Section 12.5(b)(ii)**.

"**Securities Act**" means the Securities Act of 1933 and the rules and regulations promulgated thereunder, in each case, as amended.

"**Seller**" has the meaning set forth in the Recitals to this Agreement.

"**Seller Party**" means individually, and "**Seller Parties**" means collectively, each of Seller and ABI.

"**Sub-license Agreement**" means that certain Amended and Restated Sub-license Agreement by and between Constellation Beers Ltd. and Marcas Modelo, S.A. de C.V., to be executed at the closing of the Brewery Transaction.

"**Subsidiary**" means, with respect to any Person, a corporation, partnership, joint venture, limited liability company, trust, estate or other Person of which (or in which), directly or indirectly, more than fifty percent (50%) of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors, managers or others performing similar functions of such entity (irrespective of whether at the time capital stock of any other class or classes of such entity shall or might have voting power upon the occurrence of any contingency); (b) the interest in the capital or profits of such partnership, joint venture or limited liability company or other Person; or (c) the beneficial interest in such trust or estate, is at the time owned by such first Person, or by such first Person and one (1) or more of its other Subsidiaries or by one (1) or more of such Person's other Subsidiaries.

"**Supplier**" means Grupo Modelo.

"**Tax**" or "**Taxes**" means, however denominated, all federal, state, local, foreign and other taxes, levies, fees, imposts, assessments, impositions or other government charges, including all net income, gross income, estimated income, gross receipts, business, occupation, franchise, real property, payroll, personal property, sales, transfer, stamp, use, employment, social security, unemployment, worker's compensation, commercial rent, withholding, occupancy, premium, gross receipts, profits, windfall profits, deemed profits, recapture, license,

lease, severance, capital, production, corporation, ad valorem, excise, custom, duty, escheat, built in gain pursuant to Code Section 1374 or similar tax, including any interest, fines, penalties and additions (to the extent applicable) thereon or thereto, whether disputed or not, and any obligations with respect to such amounts arising as a result of being a member of an affiliated, consolidated, combined or unitary group for any period or under any Contract with any other Person, and including any Liability for taxes of a predecessor.

"**Terminated Agreements**" means the agreements listed on **Schedule 13.1**.

"**Termination Fee**" has the meaning set forth in **Section 11.2(c)**.

"**Territory**" means the fifty states of the United States of America, the District of Columbia and Guam.

"**Third Party Claim**" has the meaning set forth in **Section 12.3**.

"**Transaction Documents**" means this Agreement, the Interim Supply Agreement, the Membership Interest Assignment and all other agreements, certificates, instruments and other documents being delivered pursuant to this Agreement or pursuant to such other agreements, certificates, instruments and other documents.

"**Transition Services Agreement**" means that certain Transition Services Agreement by and between ABI and CBI, to be executed at the closing of the Brewery Transaction.

1.2 Certain Interpretive Matters.

(a) **General Rules of Construction**. In this Agreement, unless the context otherwise requires:

(i) words of the masculine or neuter gender shall include the masculine and/or feminine gender, and words in the singular number or in the plural number shall each include the singular number or the plural number;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;

(iii) reference to any agreement (including this Agreement) or other Contract or any document means such agreement, Contract or document as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(iv) all amounts in this Agreement and the other Transaction Documents are stated and shall be paid in United States dollars unless specifically otherwise provided;

(v) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term;

(vi) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including;"

(vii) "hereto", "herein", "hereof", "hereinafter" and similar expressions refer to this Agreement in its entirety, and not to any particular Article, Section, paragraph or other part of this Agreement;

(viii) reference to any "Article" or "Section" means the corresponding Article(s) or Section(s) of this Agreement;

(ix) the descriptive headings of Articles, Sections, paragraphs and other parts of this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement or any of the terms or provisions hereof;

(x) reference to any Law or Order, means (A) such Law or Order as amended, modified, codified, supplemented or reenacted, in whole or in part, and in effect from time to time; and (B) any comparable successor Laws or Orders; and

(xi) any Contract, instrument, insurance policy, certificate or other document defined or referred to in this Agreement or in any other Transaction Document means such Contract, instrument, insurance policy, certificate or other document as from time to time amended, modified or supplemented, including (in the case of Contracts or instruments) by waiver or Consent and all attachments thereto and instruments and other documents incorporated therein.

(b) **Acknowledgment Regarding Negotiation and Preparation of Agreement.** The parties hereto further acknowledge and agree that (i) this Agreement is the result of negotiations between the parties hereto and shall not be deemed or construed as having been drafted by any one party; (ii) each of the parties hereto has been represented by its own legal counsel in connection with the negotiations and preparation of this Agreement, each of the parties hereto has been independently advised as to Tax consequences of the contemplated transactions, and each of the parties hereto and its counsel and advisors have reviewed and negotiated the terms and provisions of this Agreement (including any exhibits and schedules attached hereto) and have contributed to its preparation; and (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
PURCHASE AND SALE OF THE CROWN INTEREST

2.1 **Purchase and Sale of the Importer Interest.** Upon the terms and subject to the conditions of this Agreement, at the Closing, Constellation Beers shall purchase and accept

delivery of **98%** of the Importer Interest from Seller, CBBH shall purchase and accept delivery of **2%** of the Importer Interest from Seller, and ABI shall cause Seller to sell, assign, transfer and deliver the Importer Interest to Constellation Beers and CBBH in accordance with the percentages provided in this **Section 2.1**, free and clear of all Liens (other than Permitted Liens).

2.2 Purchase Price and Payment.

(a) The total purchase price for the Importer Interest will be an aggregate amount in cash equal to **$1,845,000,000 Dollars** (the "**Purchase Price**").

(b) At the Closing, the Buyer Parties shall pay to Seller an aggregate amount in cash equal to the Purchase Price by wire transfer of immediately available funds to the account of Seller or its designee at a bank that is designated by ABI in writing at least two Business Days prior to the Closing.

2.3 Final Distribution of Available Cash.

(a) As soon as practicable but in no event more than 30 days following the Closing, CBI shall prepare, or cause to be prepared, and deliver to ABI the Closing Statement. The calculation of Available Cash (as defined in, and calculated in accordance with, Section 10.1 of the LLC Agreement (as in effect as of June 28, 2012)) set forth in the Closing Statement shall be prepared in accordance with the Importer's accounting methods, policies, practices and procedures as of June 28, 2012, in the same manner, with consistent classification and estimation methodology, as the audited balance sheet of the Importer for the fiscal year ended December 31, 2011 delivered by CBI to ABI prior to June 28, 2012 and in the same manner as Available Cash was calculated for the most recent distribution made to the Members prior to June 28, 2012 pursuant to Section 10.2 of the LLC Agreement as in effect on June 28, 2012.

(b) In the event that ABI disagrees with CBI's proposed calculation of the Distribution Amount as set forth in the Closing Statement, ABI shall, within 30 days after receipt of the Closing Statement, so inform CBI in writing (the "**ABI Objection**"), setting forth a description of the basis of ABI's disagreement and its calculation of the Distribution Amount. During the 30-day period after ABI's receipt of the Closing Statement, subject to applicable Law, ABI and its representatives shall be provided with such access to the financial books and records of the Importer as well as any relevant work papers used by each of CBI and Importer and its respective employees, advisors or representatives to prepare the Closing Statement, as well as access to individuals and representatives responsible for and knowledgeable about the information used in the preparation of the Closing Statement and the calculation of the Distribution Amount as it may reasonably request to enable it to evaluate CBI's calculation of the Distribution Amount; **provided, that**, if ABI and its employees are not permitted by reason of applicable Law direct access to such books, records or individuals, the parties shall cooperate and work in good faith to agree on appropriate clean room procedures to permit ABI's representatives to have such access and to share the maximum amount of such information with ABI and its representatives as legally permissible and, if necessary, such 30-day period shall be extended to allow such access. CBI shall, following the Closing through the date the Closing Statement and the Distribution Amount are finally determined in accordance with the penultimate sentence of **Section 2.3(c)**, take all action reasonably necessary or desirable to

maintain and preserve all books and records, policies and procedures on which the Closing Statement and the calculation of the Distribution Amount contained therein are based so as not to impede or delay the determination of the Distribution Amount, the Closing Statement, the ABI Objection, the Final Closing Statement and the Final Distribution Amount. If no ABI Objection is received by CBI on or before the last day of such 30-day period (as such period may be extended), then the Distribution Amount set forth on the Closing Statement delivered by CBI shall be final and binding upon ABI in accordance with the penultimate sentence of **Section 2.3(c)**. During the 30 days immediately following the delivery of the ABI Objection, ABI and CBI shall seek to resolve any disagreement that they may have with respect to the matters specified in the ABI Objection.

(c) If CBI and ABI are unable to resolve all their disagreements with respect to the matters set forth in the ABI Objection during the 30 days following CBI's receipt of the ABI Objection, they shall refer any remaining disagreements to Ernst & Young LLP, or if Ernst & Young LLP is unable to serve in such a capacity, such other reputable internationally-recognized firm of independent certified public accountants mutually acceptable to CBI and ABI (Ernst & Young LLP or such other firm, the "**CPA Firm**") which, acting as experts and not as arbitrators, shall determine, on the basis set forth in and in accordance with **Section 2.3(a)** and the definition of Closing Statement and Distribution Amount, whether and to what extent, if any, the Distribution Amount set forth in the Closing Statement requires adjustment. The parties shall instruct the CPA Firm to deliver its written determination to CBI and ABI no later than 30 days after the remaining differences underlying the ABI Objection are referred to the CPA Firm. The CPA Firm's determination shall be final and binding upon CBI and ABI and their respective Affiliates. If the CPA Firm determines the Distribution Amount set forth in the Closing Statement requires adjustment, its calculation of the Distribution Amount shall not be higher than the amounts advocated by ABI in the ABI Objection nor lower than the amounts advocated by CBI in the Closing Statement. The fees and disbursements of the CPA Firm shall be borne equally by CBI and ABI. The parties shall make readily available to the CPA Firm all relevant books and records and any work papers (including those of the parties' respective accountants) relating to the Closing Statement and the ABI Objection and all other items reasonably requested by the CPA Firm in connection therewith. The Closing Statement and Distribution Amount that are final and binding on CBI, ABI and their respective Affiliates, as determined either through agreement of CBI and ABI or through the determination of the CPA Firm pursuant to this **Section 2.3(c)**, are referred to herein as the "**Final Closing Statement**" and the "**Final Distribution Amount**". The Final Distribution Amount shall bear interest from the date that the Distribution Amount would have been paid pursuant to the LLC Agreement (in effect as of June 28, 2012) at the rate of 2% per annum.

(d) CBI shall pay, or cause to be paid, the Final Distribution Amount to ABI and Constellation Beers in cash by wire transfer of immediately available funds to an account designated in advance by ABI and Constellation Beers no later than the third Business Day after the date that the Final Distribution Amount is finally determined pursuant to **Section 2.3(b)** or **Section 2.3(c)**.

ARTICLE 3
THE CLOSING

3.1 Closing and Closing Date. Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned in accordance with the terms and provisions of **Article 11** and except as agreed to in writing by ABI and CBI, the purchase and sale of Importer Interest (the "**Closing**"), shall take place on the later to occur of (a) the GM Transaction Closing, (b) the eighteenth (18th) day following the delivery by ABI to CBI of a written notice specifying the anticipated date of the GM Transaction Closing (the "**GM Transaction Closing Notice**"), and (c) issuance of a no objection letter from the Mexican Federal Competition Commission (*Comisión Federal de Competencia*) in connection with the Brewery Transaction, or expiration of the relevant statutory period (and any extension thereof) as set forth in Sections 21.III and 21.IV of the Federal Economic Competition Law (*Ley Federal de Competencia Económica*) for the parties to be entitled to consummate the Brewery Transaction; **provided, however**, that if the conditions to Closing set forth in **Section 10.1(a)** and **Section 10.2(a)** have not been satisfied, or, to the extent permitted by applicable Law, waived as of the later of (i) the GM Transaction Closing, (ii) the eighteenth (18th) day following the delivery by ABI to CBI of the GM Transaction Closing Notice, and (iii) issuance of a no objection letter from the Mexican Federal Competition Commission (*Comisión Federal de Competencia*) in connection with the Brewery Transaction, or expiration of the relevant statutory period (and any extension thereof) as set forth in Sections 21.III and 21.IV of the Federal Economic Competition Law (*Ley Federal de Competencia Económica*) for the parties to be entitled to consummate the Brewery Transaction, then the purchase and sale of Importer Interest shall take place as promptly after such later date as permitted by applicable Law after the conditions set forth in **Section 10.1(a)** and **Section 10.2(a)** have been satisfied or, to the extent permitted by applicable Law, waived (such date and time on and at which the Closing actually occurs being referred to herein as the "**Closing Date**"). The Closing shall take place at the offices of ABI's counsel, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York. The GM Transaction Closing Notice shall be delivered no earlier than the date a Subsidiary of ABI commences the Mandatory Tender Offer.

3.2 Documents and Items to be Delivered to the Buyer Parties. At the Closing, ABI shall deliver, or cause to be delivered, to CBI:

(a) The Membership Interest Assignments;

(b) A certificate in form and substance reasonably acceptable to CBI, dated the Closing Date, executed by a duly authorized officer of ABI, certifying: (i) that attached thereto is a true and complete copy of the resolutions duly adopted by the board of directors of ABI on or prior to the date hereof authorizing the execution and delivery of this Agreement and each of the other Transaction Documents to which ABI is a party, and that such resolutions have not been modified, rescinded or amended and are in full force and effect as of the Closing Date; and (ii) as to the incumbency of the ABI officers executing this Agreement or a Transaction Document and their signatures;

(c) A certificate in form and substance reasonably acceptable to CBI, dated the Closing Date, executed by a duly authorized officer of the Seller, certifying: (i) that attached

thereto is a true and complete copy of the resolutions duly adopted by the board of directors of the Seller as of the Closing Date authorizing the execution and delivery of the Membership Interest Assignments, and that such resolutions have not been modified, rescinded or amended and are in full force and effect as of the Closing Date; and (ii) as to the incumbency of the Seller's officers executing the Membership Interest Assignments and their signatures;

(d) Executed signature pages to the written consent of Importer's board of directors from the members of Importer's board of directors that are appointed or elected by the Seller, which consent shall approve an election under Code Section 754 and shall be in a form reasonably acceptable to the parties; and

(e) The Interim Supply Agreement duly executed by Supplier.

3.3 Documents and Items to be Delivered to ABI by the Buyer Parties. At the Closing, the Buyer Parties will deliver, or cause to be delivered, to ABI:

(a) The payment required to be made by CBI to ABI pursuant to **Section 2.2(b)**;

(b) A certificate, in form and substance reasonably acceptable to ABI, executed by an authorized officer of Constellation Beers, dated the Closing Date, certifying (i) that attached thereto are the resolutions duly adopted by the board of directors of Constellation Beers on or prior to the date hereof authorizing the execution, delivery and performance of this Agreement and each of the other Transaction Documents to which it is a party, and that such resolutions have not been modified, rescinded or amended and are in full force and effect as of the Closing Date and (ii) as to the incumbency of Constellation Beers' officers executing this Agreement or a Transaction Document and their signatures;

(c) A certificate, in form and substance reasonably acceptable to ABI, executed by an authorized officer of CBBH, dated the Closing Date, certifying (i) that attached thereto are the resolutions duly adopted by the board of directors of CBBH on or prior to the date hereof authorizing the execution, delivery and performance of this Agreement and each of the other Transaction Documents to which it is a party, and that such resolutions have not been modified, rescinded or amended and are in full force and effect as of the Closing Date and (ii) as to the incumbency of CBBH's officers executing this Agreement or a Transaction Document and their signatures;

(d) A certificate, in form and substance reasonably acceptable to ABI, executed by an authorized officer of CBI, dated the Closing Date, certifying (i) that attached thereto are the resolutions duly adopted by the board of directors of CBI on or prior to the date hereof authorizing the execution, delivery and performance of this Agreement and each of the other Transaction Documents to which it is a party, and that such resolutions have not been modified, rescinded or amended and are in full force and effect as of the Closing Date and (ii) as to the incumbency of the CBI officers executing this Agreement or a Transaction Document and their signatures; and

(e) The Interim Supply Agreement duly executed by Importer.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF ABI

ABI hereby represents and warrants to the Buyer Parties, unless otherwise specified, as of the date hereof and as of the Closing as follows:

4.1 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of Delaware with all corporate power and authority to own or lease all of its properties and assets and to conduct its business as currently conducted, and is duly qualified and in good standing as a foreign entity authorized to do business in each of the jurisdictions where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except for such failures to be so qualified or in good standing as would not materially and adversely affect its ability to execute or deliver at the Closing, or perform its obligations at the Closing under, the Membership Interest Assignments.

4.2 Authority of Seller. As of the Closing Date, Seller shall have all requisite power and authority to execute and deliver the Membership Interest Assignments, to perform its obligations thereunder and to consummate the transactions contemplated thereby. As of the Closing Date, the execution and delivery of the Membership Interest Assignments, the performance of its obligations thereunder and the consummation of the transactions contemplated thereby shall have been duly and validly authorized by all necessary corporate action and no other proceedings on the part of Seller shall be necessary to authorize the Membership Interest Assignments, the performance of such obligations or the consummation of such transactions.

4.3 Organization and Qualification of ABI. ABI is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization with all corporate power and authority to own or lease all of its properties and assets and to conduct its business as currently conducted, and is duly qualified and in good standing as a foreign entity authorized to do business in each of the jurisdictions where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except for such failures to be so qualified or in good standing as would not materially and adversely affect its ability to execute or deliver, or perform its obligations under this Agreement and the other Transaction Documents to which it is or will be a party.

4.4 Authority of ABI. ABI has all requisite power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is or will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by ABI of this Agreement and each of the other Transaction Documents to which it is or will be a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action and no other proceedings on the part of ABI are necessary to authorize this Agreement and each of the other Transaction Documents to which ABI is a party, the performance of such obligations or the consummation of such transactions.

4.5 Title. Seller is the record and beneficial owner of the Importer Interest and has good and marketable legal title to the Importer Interest, free and clear of all Liens (other than Permitted Liens). Except for the transactions contemplated under this Agreement or as provided under the LLC Agreement, no Person has any right (whether by Law, preemptive or contractual) to purchase or acquire the Importer Interest or any portion thereof.

4.6 No Violation or Conflict; Consents. Neither the execution and delivery by Seller, Supplier, Marcas Modelo or ABI of this Agreement or any of the other Transaction Documents to which Seller, Supplier, Marcas Modelo or ABI is or will be a party as of the Closing, as applicable, nor the performance by Seller, Supplier, Marcas Modelo or ABI of their respective obligations hereunder and thereunder, as applicable, nor the consummation of the transactions contemplated hereby and thereby will, directly or indirectly (with or without notice or lapse of time, or both):

(a) violate, contravene, conflict with or breach any term or provision of the Organizational Documents of Seller, Supplier, Marcas Modelo or ABI;

(b) except as may be provided in the Organizational Documents of Importer, violate, contravene, conflict with, breach, constitute a default under, require any notice under, or give any Person the right to cancel, modify or terminate, or accelerate the maturity or performance of, any Contract to which Seller, Supplier, Marcas Modelo or ABI is a party or by which any of their respective assets is bound; or

(c) violate, contravene or conflict with any of the terms, conditions or requirements of, or, except as may be required by the Alcoholic Beverage Authorities, require any notice to or filing with any Governmental Authority under, any Permit, Law or Order applicable to Seller, Supplier, Marcas Modelo or ABI or any of their respective assets;

other than, in the case of clauses (b) and (c), such violations, contraventions, conflicts, breaches, defaults, notices, cancellations, modifications, terminations, accelerations or rights that would not materially and adversely affect ABI's ability to execute and deliver, or perform its obligations under, this Agreement and the other Transaction Documents to which it is a party or will be a party or give rise to a Lien on the Importer Interest (other than Permitted Liens).

4.7 Litigation. As of June 28, 2012, there was no Order or Proceeding pending against the Seller, Supplier, Marcas Modelo or ABI, by any Governmental Authority or other Person that was reasonably likely to prevent, enjoin or materially delay the transactions contemplated by this Agreement.

4.8 Disclaimer. Except for the representations and warranties contained in this Agreement, none of ABI, the Seller nor any of their respective Affiliates, nor any of their respective stockholders, trustees, directors, officers, employees, Affiliates, advisors, members, fiduciaries, agents or representatives, nor any other Person has made or is making any other representation or warranty of any kind or nature whatsoever, oral or written, express or implied, with respect to ABI, the Seller, their respective Affiliates, this Agreement, any Transaction Document or the transactions contemplated hereby or thereby. Except for the representations

and warranties contained in this Agreement, ABI disclaims, on behalf of itself and its Affiliates, all Liability and responsibility for any other representation, warranty, opinion, projection, forecast, advice, statement or information made, communicated or furnished.

4.9 Brokers. No investment banker, broker, agent, finder, advisor, firm or other Person acting on behalf of Seller, ABI or any of their respective Affiliates is, or will be, entitled to any commission or broker's or finder's fees from the Buyers, CBI or their respective Affiliates.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYERS AND CBI

The Buyers and CBI, jointly and severally, hereby represent and warrant to ABI, unless otherwise specified, as of the date hereof and as of the Closing Date as follows:

5.1 Organization and Qualification of Constellation Beers. Constellation Beers is a corporation duly organized, validly existing and in good standing under the Laws of Maryland with all corporate power and authority to own or lease all of its properties and assets and to conduct its business as currently conducted, and is duly qualified and in good standing as a foreign entity authorized to do business in each of the jurisdictions where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except for such failures to be so qualified or in good standing as would not materially and adversely affect its ability to execute or deliver, or perform its obligations under this Agreement and the other Transaction Documents to which it is or will be a party.

5.2 Authority of Constellation Beers. Constellation Beers has all requisite corporate power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is or will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Constellation Beers of this Agreement and each of the other Transaction Documents to which it is or will be a party, the performance by Constellation Beers of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by the board of directors of Constellation Beers and no other corporate proceedings on the part of Constellation Beers, and no vote, consent or approval of its stockholders, are necessary to authorize this Agreement and each of the Transaction Documents to which Constellation Beers is a party, the performance of such obligations or the consummation of such transactions.

5.3 Organization and Qualification of CBBH. CBBH is a corporation duly organized, validly existing and in good standing under the Laws of Delaware with all corporate power and authority to own or lease all of its properties and assets and to conduct its business as currently conducted, and is duly qualified and in good standing as a foreign entity authorized to do business in each of the jurisdictions where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except for such failures to be so qualified or in good standing as would not materially and adversely affect its ability to execute or deliver, or perform its obligations under this Agreement and the other Transaction Documents to which it is or will be a party.

5.4 Authority of CBBH. CBBH has all requisite corporate power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is or will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by CBBH of this Agreement and each of the other Transaction Documents to which it is or will be a party, the performance by CBBH of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by the board of directors of CBBH and no other corporate proceedings on the part of CBBH, and no vote, consent or approval of its stockholders, are necessary to authorize this Agreement and each of the Transaction Documents to which CBBH is a party, the performance of such obligations or the consummation of such transactions.

5.5 Organization and Qualification of CBI. CBI is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware with all corporate power and authority to own or lease all of its properties and assets and to conduct its business as currently conducted, and is duly qualified and in good standing as a foreign entity authorized to do business in each of the jurisdictions where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except for such failures to be so qualified or in good standing as would not materially and adversely affect its ability to execute or deliver, or perform its obligations under this Agreement and the other Transaction Documents to which it is or will be a party.

5.6 Authority of CBI. CBI has all requisite corporate power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is or will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by CBI of this Agreement and each of the other Transaction Documents to which it is or will be a party, the performance by CBI of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by the board of directors of CBI and no other corporate proceedings on the part of CBI, and no vote, consent or approval of its stockholders, are necessary to authorize this Agreement and each of the Transaction Documents to which CBI is a party, the performance of such obligations or the consummation of such transactions.

5.7 No Violation or Conflict; Consents. Neither the execution and delivery by the Buyers or CBI of this Agreement or any of the other Transaction Documents to which the Buyers or CBI is a party, as applicable, nor the performance by the Buyers or CBI of its obligations hereunder and thereunder, as applicable, nor the consummation of the transactions contemplated hereby and thereby will, directly or indirectly (with or without notice or lapse of time or both):

(a) violate, contravene, conflict with or breach any term or provision of the Organizational Documents of the Buyers or CBI;

(b) violate, contravene, conflict with, breach, constitute a default under, require any notice under, or give any Person the right to cancel, modify or terminate, or accelerate the maturity or performance of, any Contract to which the Buyers or CBI is a party or by which any of its assets is bound; or

(c) violate, contravene or conflict with any of the terms, conditions or requirements of, or require any notice to or filing with any Governmental Authority or other Person under, any Permit, Law or Order applicable to the Buyers or CBI or any of their respective assets;

other than, in the case of clauses (b) and (c), such violations, contraventions, conflicts, breaches or rights that would not materially and adversely affect the Buyers' or CBI's ability to execute and deliver or perform its obligations under this Agreement and the other Transaction Documents to which it is a party or will be a party.

5.8 Litigation. As of June 28, 2012, there was no Order or Proceeding pending against the Buyers or CBI, by any Governmental Authority or other Person that was reasonably likely to prevent, enjoin or materially delay the transactions contemplated by this Agreement.

5.9 Investment Intent; Restricted Securities; LLC Interest. Each of the Buyer Parties is acquiring the Importer Interest solely for their own account, for investment purposes only, and not with a view to, or with any present intention of, reselling or otherwise distributing the Importer Interest or dividing its respective participation herein with others. Each of the Buyer Parties understands and acknowledges that: (a) the Importer Interest has not been registered or qualified under the Securities Act, or under any securities laws of any state of the United States or other jurisdiction, in reliance upon specific exemptions thereunder for transactions not involving any public offering; (b) the Importer Interest constitutes "restricted securities" as defined in Rule 144 under the Securities Act; (c) the Importer Interest is not traded or tradable on any securities exchange or over the counter; and (d) the Importer Interest may not be sold, transferred or otherwise disposed of unless a registration statement under the Securities Act with respect to the Importer Interest and qualification in accordance with any applicable state securities laws becomes effective or unless such registration and qualification is inapplicable, or an exemption therefrom is available. Each of the Buyer Parties will not transfer or otherwise dispose of any of the Importer Interest acquired hereunder or any interest therein in any manner that may cause a violation of the Securities Act or any applicable state securities laws. Each of the Buyer Parties is an "accredited investor" as defined in Rule 501(a) of the Securities Act. Constellation Beers is the record and beneficial owner of 50% of the outstanding LLC Interests.

5.10 Financial Ability. Each of the Buyer Parties acknowledges that its obligation to consummate the transactions contemplated by this Agreement and the Brewery Transaction is not and will not be subject to the receipt by any Buyer Party of any financing or the consummation of any other transaction other than the occurrence of the GM Transaction Closing and, in the case of the Brewery Transaction, the consummation of the transactions contemplated by this Agreement. The Buyer Parties have delivered to ABI a true, complete and correct copy of the executed definitive Second Amended and Restated Interim Loan Agreement, dated as of February 13, 2013, among Bank of America, N.A. ("**Bank of America**"), JPMorgan Chase Bank N.A. ("**JPMorgan**") and CBI (collectively, the "**Financing Commitment**"), pursuant to which, upon the terms and subject to the conditions set forth therein, the lenders party thereto have committed to lend the amounts set forth therein (the "**Financing**") for the purpose of funding the transactions contemplated by this Agreement and the Brewery Transaction. The Buyer Parties have delivered to ABI true, complete and correct copies of the fee letter and engagement letters relating to the Financing Commitment (redacted only as to the matters indicated therein), the

Financing Commitment has not been amended or modified prior to the date of this Agreement, and, as of the date hereof, the respective commitments contained in the Financing Commitment have not been withdrawn, terminated or rescinded in any respect. There are no agreements, side letters or arrangements to which CBI or any of its Affiliates is a party relating to the Financing Commitment that could affect the availability of the Financing. The Financing Commitment constitutes the legally valid and binding obligation of CBI and, to the Knowledge of CBI, the other parties thereto, enforceable in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws of general applicability relating to or affecting creditors' rights, and by general equitable principles). The Financing Commitment is in full force and effect and has not been withdrawn, rescinded or terminated or otherwise amended or modified in any respect, and no such amendment or modification is contemplated. Neither CBI nor any of its Affiliates is in breach of any of the terms or conditions set forth in the Financing Commitment, and assuming the accuracy of the representations and warranties set forth in **Article 4** and performance by ABI of its obligations under this Agreement and the Brewery SPA, as of the date hereof, no event has occurred which, with or without notice, lapse of time or both, would reasonably be expected to constitute a breach, default or failure to satisfy any condition precedent set forth therein. As of the date hereof, no lender has notified CBI of its intention to terminate the Financing Commitment or not to provide the Financing. There are no conditions precedent or other contingencies related to the funding of the full amount of the Financing, other than as expressly set forth in the Financing Commitment. The aggregate proceeds available to be disbursed pursuant to the Financing Commitment, together with available cash on hand and availability under CBI's existing credit facility, will be sufficient for the Buyer Parties to pay the Purchase Price hereunder and under the Brewery SPA and all related fees and expenses on the terms contemplated hereby and thereby in accordance with the terms of this Agreement and the Brewery SPA. As of the date hereof, CBI has paid in full any and all commitment or other fees required by the Financing Commitment that are due as of the date hereof. As of the date hereof, the Buyer Parties have no reason to believe that CBI and any of its applicable Affiliates will be unable to satisfy on a timely basis any conditions to the funding of the full amount of the Financing, or that the Financing will not be available to CBI on the Closing Date.

5.11 Brokers. No investment banker, broker, agent, finder, advisor, firm or other Person acting on behalf of the Buyers, CBI or any of their respective Affiliates is, or will be, entitled to any commission or broker's or finder's fees from ABI, Seller or any of their respective Affiliates.

ARTICLE 6
ABI GUARANTEE

6.1 Guarantee. (a) To induce CBI to enter into this Agreement, ABI, intending to be legally bound, hereby absolutely, unconditionally and irrevocably guarantees to CBI, the Buyers, the Importer and their respective successors or permitted assigns, as a primary obligor and not merely as a surety, (i) the due and punctual performance and observance of, and compliance with, all covenants, agreements, obligations, Liabilities, representations and warranties (A) of Seller Parties hereunder and under or pursuant to the Membership Interest Assignments from and after the date hereof until released pursuant to **Section 6.2**, (B) of Supplier or any successors or permitted assigns under or pursuant to the Interim Supply Agreement from and after the Closing

until released pursuant to **Section 6.2**, and (C) of Marcas Modelo or any successors or permitted assigns (including any matter where Marcas Modelo agrees to cause any member of the Modelo Group to take, or not to take, any action (a "**Modelo Group Obligor**")) under or pursuant to the Sub-license Agreement from and after the Closing, and (ii) the payment of any Damages incurred by CBI, the Buyers or the Importer or their respective successors and assigns as a consequence of ABI breaching its obligations hereunder pursuant to the terms hereof, Seller not executing the Membership Interest Assignments at Closing, Supplier or any successors or permitted assigns not executing the Interim Supply Agreement at Closing or breaching its obligations thereunder pursuant to the terms thereof or Marcas Modelo or any successors or permitted assigns not executing the Sub-license Agreement at Closing or breaching its obligations thereunder pursuant to the terms thereof (all such obligations and any such Damages being collectively referred to as the "**ABI Guaranteed Obligations**"). ABI further agrees that the ABI Guaranteed Obligations may be amended, modified, extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any amendment, modification, extension or renewal of any of the ABI Guaranteed Obligations, whether or not any of the foregoing would in any way increase ABI's obligations hereunder. ABI irrevocably and unconditionally waives, and agrees that its Liability under its guarantee shall be unaffected by, any act, omission, delay or other circumstance or any election of remedies by CBI, the Buyers, the Importer or their respective successors or permitted assigns that might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. ABI further agrees that its guarantee is a continuing guarantee of payment and performance of the ABI Guaranteed Obligations when due (whether or not any bankruptcy, insolvency or similar Proceeding under applicable Law shall have stayed the accrual or collection of any of the ABI Guaranteed Obligations or operated as a discharge thereof) and not of collection, and waives any right to require that resort be had by CBI, the Buyers, the Importer or their respective successors or permitted assigns to ABI, Seller, Supplier, or Marcas Modelo or any Modelo Group Obligor, as applicable, for the collection and performance of the ABI Guaranteed Obligations.

(b) The exercise or failure to exercise any right or remedy under this Agreement or the Interim Supply Agreement or Sub-license Agreement shall not affect, impair or discharge, in whole or in part, the Liability of ABI under this **Article 6**. Subject to **Section 6.2**, the obligations of ABI shall not be released, limited or impaired or subject to any defense or setoff, other than a defense that payment or performance has been made by ABI, Seller, Supplier, Marcas Modelo or any Modelo Group Obligor, as applicable, and except for defenses based on a final judicial determination by a court of competent jurisdiction that ABI, Seller, Supplier, Marcas Modelo or any Modelo Group Obligor has a defense to performance based on CBI's Breach of this Agreement, the Importer's Breach of the Interim Supply Agreement or Constellation Beers' Breach of the Sub-license Agreement, as applicable. ABI's obligations under this **Article 6** shall not be affected by any claim by ABI, Seller, Supplier, Marcas Modelo or any Modelo Group Obligor that this Agreement, the Membership Interest Assignment, the Interim Supply Agreement, or the Sub-license Agreement, as applicable, is invalid or unenforceable and any payments required to be made by it hereunder shall be made free and clear of any deduction, set-off, defense, claim or counterclaim of any kind. The rights and obligations under this **Article 6** shall survive any assignment (i) by ABI made in accordance with **Section 14.2**, (ii) by Supplier made in accordance with the terms of the Interim Supply

Agreement or (iii) by Marcas Modelo made in accordance with the terms of the Sub-license Agreement.

6.2 **Release of Guarantee**. ABI agrees that its obligations under this **Article 6** shall remain in full force and effect until (i) in the case of **Section 6.1(a)(i)(A)** and **Section 6.1(a)(ii)** (to the extent relating to the obligations of the Seller Parties), (A) with respect to the obligations that do not by their terms survive the Closing, the Closing, and (B) with respect to the obligations that by their terms survive the Closing, for so long as such obligations survive hereunder in accordance with their terms, and (ii) in the case of **Section 6.1(a)(i)(B)** and **Section 6.1(a)(ii)** (other than to the extent relating to the obligations of the Seller Parties hereunder), the termination of the Interim Supply Agreement pursuant to the terms thereof; **provided, that** ABI shall be released from its obligations under this **Article 6** concurrently with the termination of this Agreement in accordance with **Article 11**; **provided, however**, that ABI shall not be released from its obligations under this **Article 6** so long as any bona fide claim of CBI, the Buyers, the Importer or their respective successors or permitted assigns against ABI, Seller, Supplier, Marcas Modelo or their respective successors or permitted assigns, as applicable, which arises out of, or relates to, directly or indirectly, this Agreement, the Membership Interest Assignments, the Interim Supply Agreement, the Sub-license Agreement or any other document related herewith or therewith, as applicable, (a) is not settled to the reasonable satisfaction of CBI, the Buyers, the Importer or their respective successors or permitted assigns, as applicable, or discharged in full or (b) has not been finally resolved (as such term is defined in **Section 12.1**). In addition, if at any time, any payment, or part thereof, by ABI, Seller, Marcas Modelo, Supplier or their respective successors or permitted assigns is rescinded or must otherwise be returned upon the bankruptcy, insolvency, dissolution, liquidation or reorganization of ABI, Seller, Marcas Modelo, or Supplier or otherwise, the obligations of ABI under this **Article 6** shall continue to be effective or shall be automatically reinstated, all as though such payment had not been made.

ARTICLE 7
CBI GUARANTEE

7.1 **Guarantee.** (a) To induce ABI to enter into this Agreement, CBI, intending to be legally bound, hereby absolutely, unconditionally and irrevocably guarantees to ABI, Seller, Supplier, Marcas Modelo and their respective successors or permitted assigns, as a primary obligor and not merely as a surety, (i) the due and punctual performance and observance of, and compliance with, all covenants, agreements, obligations, Liabilities, representations and warranties (A) of the Buyers or any successors or permitted assigns hereunder from and after the date hereof until released pursuant to **Section 7.2**, (B) of Importer or any successors or permitted assigns under or pursuant to the Interim Supply Agreement from and after the Closing until released pursuant to **Section 7.2**, and (C) of Constellation Beers or any successors or permitted assigns under or pursuant to the Sub-license Agreement from and after the Closing, and (ii) the payment of any Damages incurred by ABI, Seller, Supplier, or Marcas Modelo or their respective successors or permitted assigns as a consequence of a Buyer or any successors or permitted assigns breaching its obligations hereunder pursuant to the terms hereof, Importer or any successors or permitted assigns not executing the Interim Supply Agreement or breaching its obligations thereunder pursuant to the terms thereof, or Constellation Beers or any successors or permitted assigns not executing the Sub-license Agreement at Closing or breaching its

obligations thereunder pursuant to the terms thereof (all such obligations and any such Damages being collectively referred to as the "**CBI Guaranteed Obligations**"). CBI further agrees that the CBI Guaranteed Obligations may be amended, modified, extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any amendment, modification, extension or renewal of any of the CBI Guaranteed Obligations, whether or not any of the foregoing would in any way increase CBI's obligations hereunder. CBI irrevocably and unconditionally waives, and agrees that its Liability under its guarantee shall be unaffected by, any act, omission, delay or other circumstance or any election of remedies by ABI, Seller, Supplier, or Marcas Modelo or their respective successors or permitted assigns that might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. CBI further agrees that its guarantee is a continuing guarantee of payment and performance of the CBI Guaranteed Obligations when due (whether or not any bankruptcy, insolvency or similar Proceeding under applicable Law shall have stayed the accrual or collection of any of the CBI Guaranteed Obligations or operated as a discharge thereof) and not of collection, and waives any right to require that resort be had by ABI, Seller, Supplier, or Marcas Modelo or their respective successors or permitted assigns to CBI, Buyers or Importer for the collection and performance of the CBI Guaranteed Obligations.

(b) The exercise or failure to exercise any right or remedy under this Agreement or the Interim Supply Agreement or Sub-license Agreement shall not affect, impair or discharge, in whole or in part, the Liability of CBI under this **Article 7**. Subject to **Section 7.2**, the obligations of CBI shall not be released, limited or impaired or subject to any defense or setoff, other than a defense that payment or performance has been made by CBI, Buyers or Importer, as applicable, and except for defenses based on a final judicial determination by a court of competent jurisdiction that a Buyer has a defense to performance based on ABI's Breach of this Agreement, Supplier's Breach of the Interim Supply Agreement, or Marcas Modelo's Breach of the Sub-license Agreement, as applicable. CBI's obligations under this **Article 7** shall not be affected by any claim by CBI, Buyers or Importer that this Agreement, the Interim Supply Agreement, or Sub-license Agreement, as applicable, is invalid or unenforceable and any payments required to be made by it hereunder shall be made free and clear of any deduction, set-off, defense, claim or counterclaim of any kind. The rights and obligations of CBI under this **Article 7** shall survive any assignment (i) by any Buyer Party made in accordance with **Section 14.2**, (ii) by Importer made in accordance with the terms of the Interim Supply Agreement or (iii) by Constellation Beers made in accordance with the terms of the Sub-license Agreement.

7.2 **Release of Guarantee**. CBI agrees that its obligations under this **Article 7** shall remain in full force and effect until (i) in the case of **Section 7.1(a)(i)(A)** and **Section 7.1(a)(ii)**, (A) with respect to the obligations that do not by their terms survive the Closing, the Closing and (B) with respect to the obligations that by their terms survive the Closing, for so long as such obligations survive hereunder in accordance with their terms, and (ii) in the case of **Section 7.1(a)(i)(B)**, the termination of the Interim Supply Agreement; **provided, that** CBI shall be released from its obligations under this **Article 7** concurrently with the termination of this Agreement in accordance with **Article 11**; **provided, however**, that CBI shall not be released from its obligations under this **Article 7** so long as any bona fide claim of ABI, the Seller, Supplier, Marcas Modelo or their respective successors or permitted assigns against a Buyer, CBI, Importer or their respective successors or permitted assigns, as applicable, which arises out

of, or relates to, directly or indirectly, this Agreement, the Interim Supply Agreement, the Sub-license Agreement or any other document related herewith or therewith, as applicable, (a) is not settled to the reasonable satisfaction of ABI, Seller, Supplier, or Marcas Modelo or their respective successors or permitted assigns, as applicable, or discharged in full or (b) has not been finally resolved (as such term is defined in **Section 12.1**). In addition, if at any time, any payment, or part thereof, by CBI, Buyers, Importer or their respective successors or permitted assigns is rescinded or must otherwise be returned upon the bankruptcy, insolvency, dissolution, liquidation or reorganization of CBI, Buyers, Importer or otherwise, the obligations of CBI under this **Article** 7 shall continue to be effective or shall be automatically reinstated, all as though such payment had not been made.

ARTICLE 8
COVENANTS OF SELLER PARTIES

8.1 **Exclusive Dealing; Acquisition Proposals.** (a) Subject to **Section 8.1(b)**, after the date hereof until the earlier of (i) the Closing and (ii) termination of this Agreement in accordance with its terms, ABI, its Subsidiaries and their respective directors and officers shall not (and they shall use reasonable best efforts to instruct and cause any of their respective employees, consultants, advisors or representatives not to), directly or indirectly, except as contemplated by this Agreement or the GM Transaction Agreement, solicit, encourage or initiate any negotiations or discussions with respect to any offer or proposal to acquire the Importer Interest. ABI will cause Seller not to, except as contemplated by this Agreement or the GM Transaction Agreement, transfer the Importer Interest to any other Person, or solicit, encourage or initiate any negotiations or discussions with respect to any offer or proposal therefor.

(b) Notwithstanding anything to the contrary in **Section 8.1(a)**, the restrictions set forth in **Section 8.1(a)** shall not apply in the event that the lenders party to the Financing Commitment notify any Buyer Party of their intention not to provide, or otherwise refuse or fail to provide, the Financing at the Closing, or if any notice is delivered pursuant to **Section 9.7(d)** hereof.

8.2 **Non-Solicitation of Employees**. For the period commencing on the Closing Date and ending on the second anniversary thereof, ABI shall not and shall not permit its Subsidiaries to, directly or indirectly, hire, solicit or encourage to leave the employment of the Importer, any employee of the Importer with whom Seller or its representatives directly communicated in connection with the negotiation and performance of this Agreement or the Interim Supply Agreement; provided, however, that the foregoing provision shall not apply to employees terminated by Importer or general advertisements or solicitations that are not specifically targeted at such persons.

ARTICLE 9
OTHER COVENANTS OF THE PARTIES

9.1 **Antitrust Approval**. The Buyer Parties shall use their reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and assist and cooperate with ABI and Grupo Modelo in doing, all things necessary, proper or advisable (subject to applicable Law) to consummate and make effective the transactions contemplated by this

Agreement and the GM Transaction. In furtherance and not in limitation of the foregoing, the Buyer Parties shall use their reasonable best efforts to (i) comply promptly with any request of any Governmental Authority for additional information, documents or other materials, including, without limitation, participating in meetings with officials of such Governmental Authority during the course of its review of the GM Transaction and/or the transactions contemplated hereby; (ii) support ABI and Grupo Modelo in their response to requests for information from any Governmental Authority in connection with its investigation of the GM Transaction and/or the transactions contemplated hereby; and (iii) otherwise assist in facilitating antitrust approval of the transactions contemplated by this Agreement and the GM Transaction. To the extent permitted by the relevant Governmental Authority, the Buyer Parties and the Seller Parties shall (a) allow the Buyer Parties (including their outside counsel) and the Seller Parties (including their outside counsel) to attend and participate in all meetings, discussions and other communications with all Governmental Authorities in connection with the review of the transactions contemplated by this Agreement, (b) promptly and fully inform CBI, ABI and Grupo Modelo of any written or material oral communication received from or given to any Governmental Authority relating to the GM Transaction or the transactions contemplated herein, and provide them with copies of any such written communication, (c) permit CBI, ABI and Grupo Modelo to review in advance, to the extent practicable with reasonable time and opportunity to comment and consider in good faith the views of the others with respect thereto, any proposed submission, correspondence or other communication by the Buyer Party to any Governmental Authority relating to the GM Transaction or the transactions contemplated herein, and (d) provide reasonable prior notice to and, to the extent practicable, consult with CBI, ABI and Grupo Modelo in advance of any meeting, material conference or material discussion with any Governmental Authority relating to the GM Transaction or the transactions contemplated herein (and allow the Seller Parties to attend and participate in such meeting, conference or discussion). If reasonably requested by ABI or Grupo Modelo, and if permitted to do so by the relevant Governmental Authority, the Buyer Parties and the Seller Parties shall, upon reasonable notice, cause an informed representative to attend any one or more meetings, either by phone or in person, before a Governmental Authority in support of approval of the transactions contemplated by this Agreement and the GM Transaction. Without limiting in any respect the parties' obligations contained in this **Section 9.1**, in the event that the parties do not agree with respect to strategy or tactics in connection with a Governmental Authority's review of the GM Transaction and/or the transactions contemplated hereby, ABI's decision will control. Each of the parties agrees to use its reasonable best efforts to propose, negotiate, commit to and effect any consent decree, settlement, remedy, undertaking, commitment, action or agreement, including any amendment or other revision to one or more of the Transaction Documents (each, a "**Remedial Action**"), as may be required in connection with a Governmental Authority's review of the GM Transaction and/or the transactions contemplated hereby; **provided that** any such Remedial Action (1) is conditioned on the consummation of the transactions contemplated by this Agreement and (2) does not, individually or in the aggregate, have a material adverse effect on such party as measured against the business of the Importer or the Buyer Parties (it being agreed and understood that, the parties shall cooperate in good faith in connection with any Remedial Action to attempt to preserve the economic benefits reasonably expected to be achieved by each of the parties hereto, but shall in any event effect any such Remedial Action required pursuant to this sentence notwithstanding anything in this parenthetical). Notwithstanding anything to the contrary contained in this **Section 9.1** or in this Agreement

other than **Section 11.2(a)** and **Section 12.5(b)**, a party shall not have any obligation under this Agreement to take any of the following actions or commit to take any of the following actions, or to cause Importer to take any of the following actions, if such party, in good faith, reasonably expects such action to have more than a *de minimis* adverse effect on the business or interests of such party or Importer: (x) to sell, dispose of or transfer or cause any of its Subsidiaries to sell, dispose of or transfer any assets; (y) to discontinue or cause any of its Subsidiaries to discontinue offering any product or service; or (z) to hold separate or cause any of its Subsidiaries to hold separate any assets or operations (either before or after the Closing Date).

9.2 Other Regulatory Matters. Except as otherwise provided in **Section 9.1**, the parties will proceed diligently and in good faith and will use their reasonable best efforts to do, or cause to be done, all things necessary, proper or advisable to, as promptly as practicable, (a) obtain all Permits from, make all filings with and give all notices to Governmental Authorities, including, without limitation, Mexican antitrust authorities, the Alcoholic Beverage Authorities or any other Person required to consummate the transactions contemplated by this Agreement, and (b) provide such other information and communications to such Governmental Authorities or other Person as the other party or such Governmental Authorities or other Person may reasonably request.

9.3 Notification of Certain Matters. Subject to compliance with applicable Law or as required by any Governmental Authority, the Buyer Parties and ABI will notify the other promptly in writing of, and contemporaneously will provide the other with true and complete copies of any and all material information or documents relating to, and will use reasonable best efforts to cure before the Closing, any event, transaction or circumstance occurring after the date of this Agreement that causes or is reasonably expected to cause a failure of any condition to the other party's obligations to consummate the transactions contemplated hereby. No notice given pursuant to this **Section 9.3** shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or the rights of the parties hereunder.

9.4 Fulfillment of Conditions. Subject to the terms and conditions of this Agreement, the Buyer Parties and ABI will cooperate with each other and use their respective reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things reasonably necessary or desirable on its part, and proceed diligently and in good faith to satisfy each condition to the other party's obligations contained in this Agreement in order to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, and neither Seller Parties nor Buyer Parties will take any action, or fail to take any action required to be taken by it hereunder, that could be reasonably expected to result in the non-fulfillment of any such condition. In furtherance and not in limitation of the foregoing, the Buyer Parties and the Seller Parties shall use their reasonable best efforts to (a) comply promptly with any request of any Governmental Authority for additional information, documents or other materials, including, without limitation, participating in meetings with officials of such Governmental Authority during the course of its review of the transactions contemplated hereby and (b) support the other parties hereto in their response to requests for information from any Governmental Authority in connection with its investigation of the transactions contemplated hereby. Notwithstanding anything to the contrary in this Agreement, the parties hereby acknowledge and agree that none of the Seller Parties has any obligation to the Buyer Parties

under this Agreement or otherwise to consummate, or seek to receive any consent required to consummate, the transactions contemplated by the GM Transaction Agreement and the Buyer Parties shall not have any rights under, and are not intended third party beneficiaries of, the GM Transaction Agreement.

9.5 Interim Supply Agreement.

(a) At Closing, ABI shall cause Supplier to execute the Interim Supply Agreement, and ABI shall deliver an executed copy of the Interim Supply Agreement to CBI in accordance with **Section 3.2**.

(b) At Closing, CBI shall cause the Importer to execute the Interim Supply Agreement, and the Buyer Parties shall deliver an executed copy of the Interim Supply Agreement to ABI in accordance with **Section 3.3**.

9.6 Conduct of Business of the Importer.

(a) During the period from the date of this Agreement to the Closing, the parties shall, and shall cause the Importer to, (i) conduct the Importer's business and operations in the ordinary course of business, consistent with past practice, and in accordance with the LLC Agreement, including with respect to making distributions of Available Cash (as such term was defined in the LLC Agreement as of June 28, 2012) in accordance with the terms thereof; (ii) use their commercially reasonable efforts to preserve intact the business organization and operations of the Importer and keep available the services of the Importer's current directors, managers, officers, employees, consultants and agents; and (iii) use their commercially reasonable efforts to preserve the goodwill of the Importer and maintain the Importer's relationships with Governmental Authorities and those Persons having business relationships with the Importer.

(b) Without limiting the generality of, and in furtherance of, **Section 9.6(a)**, from the date of this Agreement to the Closing, the parties shall not cause or permit the Importer to:

(i) make any material change in any method of accounting, keeping of books of account or accounting practices;

(ii) prepay or accelerate payment of any expenses or the incurrence of capital expenditures or increase the amount of reserves, in each case except in the ordinary course of business consistent with past practices;

(iii) increase working capital except for increases in accordance with the Business Plan (as defined in the LLC Agreement); or

(iv) delay collection of accounts receivable.

9.7 Financing Support.

(a) Each of the Buyer Parties shall use its reasonable best efforts to arrange the Financing on the terms and conditions described in the Financing Commitment as promptly

as reasonably practicable, including using its reasonable best efforts to (i) maintain in effect the Financing Commitment on the terms and conditions contained therein until the transactions contemplated by this Agreement and the Brewery Transaction are consummated; (ii) satisfy on a timely basis all conditions and covenants applicable to the Buyer Parties or any of their respective Affiliates in the Financing Commitment and otherwise comply with (or obtain the waiver thereof) its obligations under the Financing Commitment; (iii) consummate the Financing at the Closing to the extent necessary to permit the Buyer Parties to pay the Purchase Price hereunder and all amounts due under the Brewery SPA; (iv) enforce its rights under the Financing Commitment; and (v) cause the lenders and other Persons providing the Financing to fund at the Closing the Financing to the extent necessary to permit the Buyer Parties to pay the Purchase Price hereunder and all amounts due under the Brewery SPA. Each of the Buyer Parties shall use its reasonable best efforts to maintain availability under CBI's existing credit facilities, or to put replacement credit facilities in place, if CBI's existing credit facilities are terminated for whatever reason. Within one Business Day of receiving the GM Transaction Closing Notice, the Buyer Parties shall deliver the certificate referred to in Section 4.01(l) of the Financing Commitment to the Administrative Agent (as defined in the Financing Commitment) and the Arrangers (as defined in the Financing Commitment) in accordance with the Financing Commitment.

(b) If any portion of the Financing becomes unavailable on the terms and conditions contemplated in the Financing Commitment, the Buyer Parties shall use their reasonable best efforts to obtain any such portion from alternative sources as promptly as practicable following the occurrence of such event on terms that are not less favorable, taken as a whole, to the Buyer Parties. Notwithstanding the foregoing, nothing in this **Section 9.7** shall require that CBI or any of its Subsidiaries sell any stock or assets, other than any sale of the CBI Interest in connection with Seller Parties' Drag-Along Right under **Section 12.5**.

(c) Buyer Parties shall not permit any amendment or modification to be made to the Financing Commitment or waive any term thereof without obtaining ABI's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed unless ABI has determined such amendment or modification is, or is reasonably likely to, prevent, delay or impair the availability of the Financing or the consummation of the transactions contemplated by this Agreement) (provided that Buyer Parties may, without obtaining such prior written consent, replace or amend the Financing Commitment to add lenders, lead arrangers, bookrunners, syndication agents or similar entities that have not executed the Financing Commitments as of the date of this Agreement (but not to make any other changes), so long as (i) any such additional lender is a "Qualified Replacement Lender" (as defined in the Financing Commitment), and (ii) each of JPMorgan and Bank of America continue to be committed under the Financing Commitment to fund at least twenty percent (20%) of the aggregate principal amount contemplated by the Financing Commitment.

(d) Buyer Parties shall keep ABI informed on a reasonably current basis in reasonable detail of the status of the Financing. Without limiting the generality of the foregoing, Buyer Parties shall give ABI prompt notice (which shall in no event be more than two Business Days from occurrence): (i) if Buyer Parties become aware of any breach or default (or any event or circumstance that, with or without notice, lapse of time or both, would reasonably be expected to give rise to any breach or default) by any party to any Financing Commitment; (ii) of the

receipt by it or any notice or other written communication from any Person with respect to any (A) actual, potential or alleged breach, default, termination or repudiation by any party to the Financing Commitment or any provisions of the Financing Commitment or (B) dispute or disagreement between or among any parties to any Financing Commitment relating to the Financing; (iii) if for any reason Buyer Parties believe in good faith that (A) there is (or there is likely to be) a dispute or disagreement between or among any parties to any Financing Commitment relating to the Financing or (B) there is a material possibility that it will not be able to obtain all or any portion of the Financing on the terms, in the manner or from the sources contemplated by the Financing Commitment; and (iv) upon receiving the Financing. As soon as reasonably practicable, but in any event within two Business Days after the date ABI delivers to Buyer Parties a written request, Buyer Parties shall provide any information reasonably requested by ABI relating to any circumstance referred to in clause (i), (ii) or (iii) of the immediately preceding sentence.

9.8 Guarantees. With the exception of the guarantee provided by GModelo Corporation in favor of South Dearborn, LLC, the landlord of Importer's office space at One South Dearborn Street, Suite 1700, Chicago, Illinois 60603, in connection with that certain Office Lease, dated as of January 1, 2012, by and between South Dearborn, LLC and Importer (the "**Importer Office Lease**"), CBI shall cause any guarantees of Seller or any of its Affiliates with respect to payment or performance of Importer under any Contract to be terminated effective as of the Closing without any further Liability to the Seller Parties or any of their respective Affiliates, equity holders, officers, directors or representatives thereunder or under any replacement guarantee. In connection with the termination of such guarantees, at or prior to the Closing, CBI shall arrange for the issuance of replacement guarantees. Neither CBI nor the Importer shall be required to incur any costs or expenses in connection with the termination or replacement of such guarantees.

9.9 Release.

(a) Each of CBI, Constellation Beers, CBBH, and Importer, for and on behalf of itself and its Affiliates, shall execute at the Closing a release acquitting, releasing and discharging each of ABI, Seller and their respective officers, directors, equity holders and Affiliates from any and all Liabilities or obligations to CBI, Constellation Beers, CBBH or Importer or any of their Affiliates arising under or in connection with any of the Terminated Agreements or the LLC Agreement.

(b) Each of ABI and Seller, for and on behalf of itself and its Affiliates, shall execute at the Closing a release acquitting, releasing and discharging each of CBI, Constellation Beers, CBBH, Importer and their respective officers, directors, equity holders and Affiliates from any and all Liabilities or obligations to ABI and Seller or any of their Affiliates arising under or in connection with any of the Terminated Agreements or the LLC Agreement.

9.10 Post-Closing Cooperation. Subject to compliance with applicable Law, from and after the Closing Date, the Buyer Parties and the Seller Parties agree to (a) cooperate with each other, share information and supporting materials and documents relating to ownership of the Importer Interest prior to or after the Closing; **provided, however**, that access to any such information, supporting materials or documents shall be determined by taking into account,

among other considerations, the competitive positions of the parties; **provided, further**, that any such access shall (i) be under the supervision of such party's designated personnel or representatives and (ii) be in such a manner as not to unreasonably interfere with any of the businesses or operations of such party or their respective Affiliates; **provided, further**, that all requests for any such access made pursuant to this **Section 9.10** shall be directed to such party and its designated representatives; and (b) provide the other parties with such assistance as may reasonably be requested, at the requesting party's expense, in connection with the preparation of any Tax return, any income Tax audit or other administrative or judicial Proceeding relating to Importer or the ownership of the Importer Interest prior to or after the Closing, requests for information from Governmental Authorities relating to the transactions contemplated by this Agreement, and matters relating to unclaimed property; **provided, however**, that a party shall not be obligated to make any work papers available to the requesting party unless and until such requesting party has signed a customary confidentiality and hold harmless agreement relating to such access to work papers in form and substance reasonably acceptable to such party to whom such request is being made.

ARTICLE 10
CONDITIONS TO CLOSING

10.1 Conditions to Obligations of ABI. The obligations of ABI to close the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by ABI at or prior to the Closing of the following conditions:

(a) No preliminary, temporary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or Governmental Authority, nor any statute, rule, regulation or executive order promulgated or enacted by any Governmental Authority after the date hereof, shall be in effect that would make the consummation of the transactions contemplated hereby illegal or otherwise prevent the consummation of such transactions;

(b) The GM Transaction Closing shall have occurred; and

(c) A no objection letter from the Mexican Federal Competition Commission (*Comisión Federal de Competencia*) in connection with the Brewery Transaction shall have been issued, or the relevant statutory period (and any extension thereof) as set forth in Sections 21.III and 21.IV of the Federal Economic Competition Law (*Ley Federal de Competencia Económica*) for the parties to be entitled to consummate the Brewery Transaction shall have expired.

10.2 Conditions to Obligations of Buyer Parties. The obligations of the Buyer Parties to close the transaction contemplated hereby shall be subject to the satisfaction or waiver by the Buyer Parties at or prior to the Closing of the following conditions:

(a) No preliminary, temporary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or Governmental Authority, nor any statute, rule, regulation or executive order promulgated or enacted by any Governmental Authority after the date hereof, shall be in effect that would make the consummation of the transactions contemplated hereby illegal or otherwise prevent the consummation of such transactions;

(b) The GM Transaction Closing shall have occurred; and

(c) A no objection letter from the Mexican Federal Competition Commission (*Comisión Federal de Competencia*) in connection with the Brewery Transaction shall have been issued, or expiration of the relevant statutory period (and any extension thereof) as set forth in Sections 21.III and 21.IV of the Federal Economic Competition Law (*Ley Federal de Competencia Económica*) for the parties to be entitled to consummate the Brewery Transaction shall have expired.

ARTICLE 11
TERMINATION

11.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing, as follows:

(a) By mutual written consent of CBI and ABI;

(b) By ABI or by CBI, if the GM Transaction Agreement is terminated;

(c) By CBI or by ABI, if the Closing shall not have occurred on or before December 30, 2013 (provided that the right to terminate this Agreement under this **Section 11.1(c)** shall not be available to any party hereto whose failure to perform or comply with any covenant or agreement under this Agreement applicable to it has proximately contributed to, or resulted in, the failure of the Closing to occur on or before such date).

11.2 Effect of Termination. If this Agreement is terminated in accordance with **Section 11.1**, this Agreement shall become null and void and of no further force or effect with no Liability to any Person on the part of any party hereto (or any of its representatives or Affiliates), except that:

(a) The terms and provisions of this **Section 11.2** and **Article 14** shall survive and remain in full force and effect, the terms and provisions of **Article 6** and **Article 7** shall survive and remain in full force and effect until terminated in accordance with their respective terms and the terms and provisions of **Section 12.5(b)** shall survive and remain in full force and effect until twelve (12) months following any termination of this Agreement; provided that if (i) a Governmental Authority appoints a trustee to monitor ABI's compliance with an Order, the terms and provisions of **Section 12.5(b)** shall survive and remain in full force and effect for twelve (12) months following the date of such appointment, unless such Order requires a longer period, and (ii) if ABI or one of its Affiliates enters into a definitive agreement providing for a Participatory Transaction within twelve (12) months of its termination of this Agreement, the terms and provisions of **Section 12.5(b)** shall survive until the earlier of the consummation of such Participatory Transaction and the termination of such definitive agreement.

(b) No termination of this Agreement shall relieve any party hereto from any Liability for any Breach of this Agreement that arose prior to such termination or resulting from fraud of such party.

(c) In the event of termination of this Agreement (i) by ABI pursuant to **Section 11.1(c)** if CBI would have been entitled to terminate this Agreement pursuant to **Section 11.1(c)** at the time of such termination, or (ii) by either ABI or CBI pursuant to **Section 11.1(b)**, then in either case ABI shall promptly (but in no event later than two (2) Business Days after the date of such termination) pay, or cause to be paid, to CBI (or its designee) an amount equal to $75,000,000 (the "**Termination Fee**") by wire transfer of same day funds to any account designated by CBI (or its designee). For the avoidance of doubt, in no event shall ABI be required to pay the Termination Fee on more than one occasion.

ARTICLE 12
INDEMNIFICATION

12.1 Survival.

(a) **Representations and Warranties**. All of the representations and warranties of the parties contained in this Agreement, including the schedules hereto, shall survive the Closing; **provided**, **however**, that the representations and warranties set forth in **Sections 4.6**, **4.7**, **5.7** and **5.8** hereof shall survive only for one year after the Closing (it being understood that in the event notice of any claim for indemnification under **Section 4.6**, **4.7**, **5.7** or **5.8** hereof has been given (within the meaning of **Section 14.3** hereof) within the applicable survival period, the representations and warranties that are the subject of such indemnification claim shall survive with respect to such claim until such time as such claim is finally resolved).

A claim shall be "finally resolved" when: (i) the parties to the dispute have reached an agreement in writing; (ii) a court of competent jurisdiction shall have entered a final and non-appealable Order or judgment; or (iii) an arbitration or like panel shall have rendered a final non-appealable determination with respect to disputes the parties have agreed to submit thereto.

(b) **Covenants and Agreements**. All of the covenants and agreements of the parties, including the guarantees in **Articles 6** and **7**, shall survive the Closing and continue in full force and effect forever, or otherwise in accordance with their respective terms.

12.2 Terms of Indemnification. Subject to the terms and provisions of this **Article 12**:

(a) From and after the Closing, ABI shall indemnify Buyer Parties against, and shall protect, defend and hold harmless Buyer Parties from, all Damages imposed on, sustained, incurred or suffered by the Buyer Parties to the extent arising out of, relating to or resulting from (i) any Breach of any of the representations or warranties of ABI contained in this Agreement, and (ii) any Breach of ABI's covenants or agreements contained in this Agreement.

(b) From and after the Closing, Buyer Parties shall, jointly and severally, indemnify ABI against, and shall protect, defend and hold harmless ABI from, all Damages imposed on, sustained, incurred or suffered by the Seller Parties to the extent arising out of or resulting from (i) any Breach of any representations or warranties of any Buyer Party contained in this Agreement, (ii) any Breach of any Buyer Party's covenants or agreements contained in this Agreement and (iii) any obligations and liabilities relating to the Importer Office Lease.

12.3 Procedures with Respect to Third Party Claims. Promptly after the commencement of any action or Proceeding by a third party against any party hereto (a "**Third Party Claim**") that is reasonably expected to give rise to a claim for indemnification under this **Article 12**, the party seeking indemnification (the "**Indemnified Party**") shall give notice in writing to the party (the "**Indemnifying Party**") from whom indemnification is sought of such Third Party Claim. No failure to provide such notice shall affect indemnification hereunder unless such failure materially prejudices the Indemnifying Party. The Indemnifying Party shall then be entitled to participate in such action or Proceeding and, to the extent that it shall wish, to assume the defense thereof, and shall have the sole power to direct and control such defense, with counsel reasonably satisfactory to such Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of a claim, the Indemnifying Party shall not be liable to such Indemnified Party under **Section 12.2** for any fees of other counsel or any other expenses, in each case subsequently incurred by such Indemnified Party in connection with the defense thereof, other than reasonable costs of investigation. If an Indemnifying Party assumes the defense of such an action (a) no compromise or settlement thereof may be effected by the Indemnifying Party without the Indemnified Party's consent (which shall not be unreasonably withheld) unless (i) there is no finding or admission of any violation of Law, or any violation of the rights of any Person, by the Indemnified Party and no adverse effect on any other claims that may be made against the Indemnified Party and (ii) the sole relief provided is monetary Damages that are paid in full by the Indemnifying Party and (b) the Indemnifying Party shall have no Liability with respect to any compromise or settlement thereof effected by the Indemnified Party without its consent (which shall not be unreasonably withheld). Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that any action may materially and adversely affect it or its Affiliates other than as a result of monetary Damages, such Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise or settle such action, but the Indemnified Party shall not compromise or settle any such action without the Indemnifying Party's prior written consent and the Indemnifying Party shall have no Liability with respect to any judgment entered in any action so defended, or a compromise or settlement thereof entered into, without its consent (which shall not be unreasonably withheld). The Indemnified Party shall cooperate with the Indemnifying Party and its counsel in order to ensure the proper and adequate defense of a Third Party Claim, including by providing access to its relevant business records and other documents, and employees.

12.4 Representation. It is understood and agreed that Nixon Peabody LLP shall not be precluded from representing the Importer after the date hereof as a result of any legal services or advice it may render to the Buyer Parties in connection with this Agreement, the Transaction Documents, or the transactions contemplated hereby or thereby.

12.5 Sole Remedy; Drag-Along Right.

(a) Following the Closing, the indemnification provided in this **Article 12** shall be the exclusive remedy and in lieu of any and all other rights and remedies which the Indemnified Parties may have under this Agreement or otherwise against each other with respect to the transactions contemplated hereby for monetary relief with respect to any Breach of any representation or warranty or any failure to perform any covenant or agreement set forth in this Agreement, and each party hereto each expressly waives any and all other rights or causes of

action it or its Affiliates may have against the other party or its Affiliates now or in the future under any Law with respect to the subject matter hereof, except in either case for fraud of the other party, the parties' rights to seek specific performance in accordance with **Section 14.13**, or enforcement of the guarantees in **Articles 6** and 7.

(b) If (i) the Buyer Parties fail to consummate the transactions contemplated hereunder when all conditions precedent set forth in **Section 10.2** to the Buyer Parties' obligations to close hereunder have been satisfied or waived, or if all conditions to obligations of the Buyer Parties to consummate the transactions contemplated hereunder would have been satisfied but for a Breach of this Agreement by a Buyer Party, or (ii) CBI fails to consummate the Brewery Transaction when all conditions precedent set forth in Article 6 of the Brewery SPA to CBI's obligation to close thereunder have been satisfied or waived, or if all conditions to the obligation of CBI to consummate the Brewery Transaction would have been satisfied but for a Breach of the Brewery SPA by CBI, then the Seller Parties shall be entitled to: (x) solicit, encourage or initiate negotiations and discussions in good faith with bona fide third parties pursuant to arm's length discussions and negotiations with respect to the sale or transfer of one hundred percent (100%) of the LLC Interests of the Importer (the "**Entire Importer Interest**"), and (y) pursuant to such discussions and negotiations, enter into an agreement to sell to one or more Persons (the "**Alternative Purchaser**") the Entire Importer Interest for cash, without any limitation and without requiring the approval of or notice to any Buyer Party or its Affiliates, including any approval of any Buyer Party or its Affiliates that may be required pursuant to the LLC Agreement, which approval, if any, is hereby granted by the Buyer Parties and their Affiliates, and the Buyer Parties shall be required to sell the fifty percent (50%) of the LLC Interests of the Importer Constellation Beers and its Affiliates currently own (the "**CBI Interest**") to the Alternative Purchaser in accordance with the following and to enter into any agreements reasonably required to effectuate such sale (the "**Drag-Along Right**"):

(i) If the Seller Parties determine to sell the Entire Importer Interest to the Alternative Purchaser pursuant to a sale under this **Section 12.5(b)** (such a sale, a "**Participatory Transaction**"), then upon fifteen (15) days' prior written notice from the Seller Parties (the "**Drag-Along Notice**"), which notice shall include, in reasonable detail, the terms and conditions of the Participatory Transaction, including the time and place of closing and the aggregate purchase price for the Entire Importer Interest, the Buyer Parties shall be obligated to, and shall, on the same terms and conditions specified in the Drag-Along Notice, sell, transfer and deliver, or cause to be sold, transferred and delivered, to the Alternative Purchaser, the CBI Interest in the same transaction at the closing of the Participatory Transaction (and will deliver certificates or assignments for the CBI Interest at such closing, free and clear of all claims, liens and encumbrances subject to customary exceptions); provided that, the Buyer Parties shall only be required to make representations and warranties relating to due organization of Buyer Parties, brokers, non-contravention, title and ownership of, and authority to sell the CBI Interest and shall only be required to provide indemnification to the Alternative Purchaser (which shall be capped at the net cash proceeds received by the Buyer Parties in the transaction and shall be on a pro rata basis with the Seller Parties' indemnification obligations and subject to any limitations on the Seller Parties' obligations to indemnify the Alternative Purchaser (including any caps on indemnification obligations)) for breaches of such representations and warranties and any covenants that both the Seller Parties and the

Buyer Parties are required to make. For the avoidance of doubt, ABI shall obtain from Seller any consent or approval required under Importer's organizational documents to consummate a Participatory Transaction and the effectiveness of the grant of the Drag-Along Right granted to the Seller Parties pursuant to this **Section 12.5(b)** (and any exercise thereof) is contingent upon CBI's receipt of any such consent or approval from Seller.

(ii) In determining the terms and conditions of the Participatory Transaction for purposes of this **Section 12.5(b)**, the Seller Parties shall act in good faith in determining such terms and conditions and will not include terms that the Buyer Parties could not lawfully accept, or include any non-compete (or similar restriction on the ability of any Buyer Party or its Affiliates to operate or compete) or requirement on the part of any Buyer Party to accept any restrictions or conditions on the business of any such Buyer Party in order to obtain consents of Governmental Authorities other than with respect to the CBI Interest (the "**Restrictive Terms**"). Notwithstanding the provisions of this **Section 12.5(b)**, if the Seller Parties determine to consummate a Participatory Transaction with Restrictive Terms, the Seller shall purchase from Constellation Beers, and Constellation Beers shall sell to the Seller, the CBI Interest as Constellation Beers otherwise would have transferred in such Participatory Transaction had such Participatory Transaction not included the Restrictive Terms; provided that the Seller Parties shall hold the Entire Importer Interest (i) solely for the purposes of facilitating a sale to an Alternative Purchaser and (ii) for that period of time necessary to effect the transfer of the Entire Importer Interest to such Alternative Purchaser.

(iii) In any Participatory Transaction contemplated by this **Section 12.5(b)**, CBI shall receive, in exchange for the CBI Interest, (x) Participatory Transaction Amount, minus (y) $375,000,000, and ABI shall pay such amount to CBI on the closing date of the sale of the Entire Importer Interest to the Alternative Purchaser in the Participatory Transaction or such other times specified in the definitive agreement providing for such Participatory Transaction if the Seller Parties are also required their pro rata portion of the proceeds from such Participatory Transaction at such times.

(c) For the avoidance of doubt, the Seller Parties shall be entitled to the Drag-Along Right if CBI fails to acquire the Importer Interest or if CBI fails to consummate the Brewery Transaction.

12.6 Adjustments to Losses.

(a) In calculating the amount of any loss, the proceeds actually received by the Indemnified Party or any of its Affiliates under any insurance policy or pursuant to any claim, recovery, settlement or payment by or against any other Person, in each case relating to any claim for indemnification pursuant to **Section 12.2**, net of any actual costs or expenses incurred in connection with securing or obtaining such proceeds, shall be deducted, except to the extent that the adjustment itself would excuse, exclude or limit the coverage of all or part of such loss. In the event that an Indemnified Party has any rights against a third party with respect to any occurrence, claim or loss that results in a payment by an Indemnifying Party under this **Article 12**, such Indemnifying Party shall be subrogated to such rights to the extent of such

payment; provided that until the Indemnified Party recovers full payment of the loss related to any such claim, any and all claims of the Indemnifying Party against any such third party on account of said indemnity payment is hereby expressly made subordinate and subject in right of payment to the Indemnified Party's rights against such third party. Without limiting the generality or effect of any other provision hereof, each Indemnified Party and Indemnifying Party shall duly execute upon request all instruments reasonably necessary to evidence and perfect the subrogation and subordination rights detailed herein, and otherwise cooperate in the prosecution of such claims.

(b) If an Indemnified Party recovers an amount from a third party in respect of a loss that is the subject of indemnification hereunder after all or a portion of such loss has been paid by an Indemnifying Party pursuant to this **Article 12**, the Indemnified Party shall promptly remit to the Indemnifying Party the excess (if any) of (i) the amount paid by the Indemnifying Party in respect of such loss, plus the amount received from the third party in respect thereof, less (ii) the full amount of loss.

(c) Indemnified losses to any Indemnified Party hereunder shall be determined net of the amount of any Tax benefit actually recognized in cash by the Indemnified Party in connection with such indemnified loss or any of the circumstances giving rise thereto.

12.7 Consequential Damages. Subject to the next sentence of this **Section 12.7**, no Person shall be liable under this **Article 12** for any consequential, punitive, special, incidental or indirect Damages, including lost profits and diminution in value, except to the extent awarded by a court of competent jurisdiction in connection with a Third Party Claim. Notwithstanding anything to the contrary in this Agreement, including the second sentence of **Section 2.1** and **Section 12.5**, the restriction in the preceding sentence on the right of a party hereunder to recover consequential, punitive, special, incidental and indirect Damages, including lost profits and diminution in value, shall not apply where the Seller Parties fail to sell all of the Importer Interest to the Buyers after all conditions precedent set forth in this Agreement to the Seller Parties' obligations to sell the Importer Interest to the Buyers hereunder have been satisfied or waived.

12.8 Accuracy and Compliance. The right to indemnification or other remedy based on any representations, warranties, obligations, covenants and agreements set forth in this Agreement or in any of the other Transaction Documents, will not be affected by any investigation conducted with respect to, or any notice or knowledge acquired (or capable of being acquired) at any time, whether before or after the date hereof or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or agreement, will not affect the right to indemnification or other remedy based on such representations, warranties, covenants and agreements.

ARTICLE 13
TERMINATION OF JOINT VENTURE AGREEMENTS

Effective as of the Closing, the parties hereto agree, on behalf of themselves and each of their Affiliates, that each of the agreements included on **Schedule 13.1** (the "**Terminated**

Agreements") shall terminate in its entirety and have no further force and effect without any further action by any party hereto or thereto or any other Person and no party to any such agreement or other Person shall have any further rights or obligations thereunder whatsoever, all effective upon the Closing; **provided**, **that** to the extent that any such terminated agreement had already terminated on or prior to the Closing by its own terms such termination shall continue to be effective pursuant to such terms.

ARTICLE 14
GENERAL PROVISIONS

14.1 **Parties in Interest; Successors and Assigns; No Third Party Rights.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person (other than the released parties pursuant to **Section 9.9**, the person to who the guarantees in **Article 6** and **Article 7** are made, and the Indemnified Parties pursuant to **Article 12**) any legal or equitable right, title, privilege, benefit, interest, remedy or claim of any nature whatsoever under or by reason of this Agreement, or any term or provision hereof except that the financing sources under the Financing Commitment shall be considered third party beneficiaries with respect to **Section 14.12**.

14.2 **Assignment.** This Agreement and the rights, title, privileges, benefits, interests, remedies and obligations hereunder may not be assigned by any party hereto, by operation of Law or otherwise; **provided**, **however**, that a Buyer may (a) assign any or all of its rights, title, privileges, benefits, interests and remedies hereunder to any one or more wholly owned, direct or indirect Subsidiaries of CBI; (b) designate any one or more of wholly owned, direct or indirect Subsidiaries of CBI to perform its obligations hereunder; and (c) assign any or all of its rights, title, privileges, benefits, interests and remedies hereunder to and for the benefit of any lender to CBI for the purpose of providing collateral security; provided further that any such designation or assignment shall not impede or delay the consummation of the transactions contemplated by this Agreement or otherwise impede the rights of ABI under this Agreement and no such assignment or delegation shall relieve the Buyer Parties of any of their obligations hereunder. Any purported assignment of this Agreement in violation of this **Section 14.2** shall be null and void.

14.3 **Notices.** (a) All notices, demands, requests, or other communications that may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be delivered in person, mailed by registered or certified mail, return receipt requested, delivered by a commercial courier guaranteeing overnight delivery, or sent by facsimile (transmission confirmed), addressed as follows:

If to the Buyers or CBI:

Constellation Brands, Inc.
207 High Point Drive
Building 100
Victor, New York 14564
Attn: General Counsel

Telephone: +1 (585) 678-7266
Fax: +1 (585) 678-7103

with a required copy (which copy shall not constitute notice hereunder) to:

Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604
Attn: James O. Bourdeau
Telephone: +1 (585) 263-1000
Fax: +1 (585) 346-1600

If to Seller or ABI:

Anheuser-Busch InBev SA/NV
Brouwerijplein 1
Leuven 3000
Belgium
Attn: Chief Legal Officer & Company Secretary
Telephone: +32 16 276942
Fax: +32 16 506699

with a copy (which copy shall not constitute notice hereunder) to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attn: Frank J. Aquila
George J. Sampas
Krishna Veeraraghavan
Telephone: +1 (212) 558-4000
Fax: +1 (212) 558-3588

Delivery shall be effective upon delivery or refusal of delivery, with the receipt or affidavit of the United States Postal Service or overnight delivery service or facsimile confirmation deemed conclusive evidence of such delivery or refusal. Each party may designate by notice in writing a new address to which any notice, demand, request, or communication may thereafter be so given, served, or sent.

(b) Subject to **Section 9.1**, the parties hereby agree that any and all communications of the Buyer Parties with respect to this Agreement and the transactions contemplated hereby shall be made exclusively with ABI and its designated representatives, and the Buyer Parties shall not, directly or indirectly, contact Grupo Modelo, Seller or any of their controlled Affiliates or any of their respective officers, directors, employees, advisors or other representatives regarding any such matters; **provided**, **however**, that nothing in this **Section 14.3(b)** shall prohibit the Buyer Parties from communicating with Grupo Modelo, Seller or any of their controlled Affiliates or any of their respective officers, directors, employees, advisors or other representatives regarding:

(i) the operation of Importer during the period from June 28, 2012 through the Closing; (ii) any communications or notices required pursuant to the LLC Agreement; (iii) the Importer's transition planning regarding the transactions contemplated by this Agreement; and (iv) any public statements or press releases by the Buyer Parties, Seller or the Importer regarding the transactions contemplated by this Agreement to the extent the Buyer Parties have provided a copy of any such public statement or press release to ABI in advance of any communication with Grupo Modelo, Seller or any of their controlled Affiliates.

14.4 Entire Agreement. This Agreement (including the schedules and exhibits hereto, which are incorporated into this Agreement by this reference and made a part hereof), the Confidentiality Agreement, dated as of May 26, 2012, by and between CBI, ABI and solely with respect to Section 2 thereof, Grupo Modelo (the "**Confidentiality Agreement**"), the Brewery SPA, the Sub-license Agreement, the Transition Services Agreement and each of the other Transaction Documents, constitute the entire agreement among the parties with respect to the subject matter hereof and thereof, and supersede all prior or contemporaneous agreements and understandings, whether written or oral, among the parties hereto, or any of them, with respect to the subject matter hereof and thereof.

14.5 Counterparts and Facsimile Signature. This Agreement may be executed in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, and all of which, taken together, shall be deemed to constitute one and the same instrument. This Agreement may be executed by facsimile signature.

14.6 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law, Order or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

14.7 Amendment. Subject to **Section 14.15**, this Agreement may not be amended or modified except by a written instrument, specifically referring to this Agreement and signed by each of the parties hereto.

14.8 Waiver. Neither the failure nor any delay of any party to this Agreement to assert or exercise any right, power, privilege or remedy under this Agreement, any of the other Transaction Documents or otherwise, or to enforce any term or provision hereof or thereof, shall constitute a waiver of such right, power, privilege or remedy, and no single or partial exercise of any such right, power, privilege or remedy shall preclude any other or further exercise of such right, power, privilege or remedy or the exercise of any other right, power, privilege or remedy. The rights, powers, privileges and remedies of the parties to this Agreement are cumulative and not alternative. Any waiver of any right, power, privilege or remedy hereunder or under any of the Transaction Documents shall be valid and binding only if set forth in a written instrument specifically referring to this Agreement and signed by the party or parties giving such waiver,

and shall be effective only in the specific instance and for the specific purpose for which it is given.

14.9 Further Assurances. Each party shall do and perform or cause to be done and performed all further acts and things and shall execute and deliver all further agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement or any of the Transaction Documents and the consummation of the transactions contemplated hereby and thereby. For the avoidance of doubt, Buyer Parties agree that they shall not assert any consent or approval is required by the Buyer Parties or their respective Affiliates in connection with the GM Transaction or the acquisition of the capital stock of Extrade by ABI or one of its Affiliates in connection with the GM Transaction.

14.10 Expenses. The Buyer Parties and Seller Parties shall bear their own respective fees, costs and expenses incurred in connection with this Agreement and the Transaction Documents (including the preparation, negotiation and performance hereof and thereof) and the transactions contemplated hereby and thereby (including fees and disbursements of attorneys, accountants, agents, representatives and financial and other advisors).

14.11 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware without regard to its conflict of laws principles.

14.12 Submission to Jurisdiction; Service of Process; Waiver of Jury Trial. THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF TO THE EXTENT THAT SUCH PRINCIPLES WOULD DIRECT A MATTER TO ANOTHER JURISDICTION. The parties hereby irrevocably submit to the personal jurisdiction of the courts of the State of Delaware and the Federal courts of the United States of America located in the State of Delaware solely in respect of the interpretation and enforcement of the provisions of this Agreement, and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or Proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or Proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims relating to such action, Proceeding or transactions shall be heard and determined in such a Delaware State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and, to the extent permitted by Law, over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or Proceeding in the manner provided in **Section 14.3** or in such other manner as may be permitted by Law shall be valid and sufficient service thereof. The parties further agree that New York state or United States Federal courts sitting in the Borough of Manhattan, City of New York shall have exclusive jurisdiction over any action brought against any financing source under the Financing Commitment in connection with the transactions contemplated under this Agreement.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY SUCH CLAIM AGAINST THE FINANCING SOURCES UNDER THE FINANCING COMMITMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 14.12.

14.13 Specific Performance.

(a) Each of the parties hereto hereby agree that (i) the Importer Interest is a unique property, and (ii) irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached, and that monetary Damages or other legal remedies would not be an adequate remedy for any failure to purchase or sell the Importer Interest or consummate the Brewery Transaction or for any such Damages. Accordingly, except as otherwise provided in **Section 12.5** and **Section 12.7**, the parties hereto acknowledge and hereby agree that in the event of any Breach or threatened Breach by ABI, on the one hand, or the Buyer Parties, on the other hand, of any of their respective covenants or obligations set forth in this Agreement, ABI, on the one hand, and the Buyer Parties, on the other hand, shall be entitled, in addition to all other remedies available under Law or equity, to an injunction or injunctions to prevent or restrain Breaches or threatened Breaches of this Agreement by the other (as applicable), and to specifically enforce the terms and provisions of this Agreement to prevent Breaches or threatened Breaches of, or to enforce compliance with, the covenants and obligations of the other (as applicable) under this Agreement, and this right shall include the right of ABI to cause CBI to fully enforce the terms of the Financing Commitment, including by requiring CBI to file one or more lawsuits against the lenders party to the Financing Commitment to fully enforce the obligations of such lenders under the Financing Commitment, as well as the right of CBI to cause ABI to cause the Importer Interest to be transferred to Constellation Beers and CBBH upon satisfaction or waiver of all conditions to Seller Parties' obligation to transfer such Importer Interest to Constellation Beers and CBBH.

(b) Each of ABI, on the one hand, and the Buyer Parties, on the other hand, hereby agrees not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain Breaches or threatened Breaches of this Agreement by ABI or the Buyer Parties, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent Breaches or threatened Breaches of, or to enforce compliance with, the

covenants and obligations of ABI or the Buyer Parties, as applicable, under this Agreement. Any party seeking an injunction or injunctions to prevent Breaches or threatened Breaches of, or to enforce compliance with, the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with such Order or injunction. Subject to **Section 12.5** and **Section 12.7**, the parties hereto further agree that (x) by seeking the remedies provided for in this **Section 14.13**, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement (including monetary Damages) and (y) nothing set forth in this **Section 14.13** shall require any party hereto to institute any Proceeding for (or limit any party's right to institute any Proceeding for) specific performance under this **Section 14.13** prior or as a condition to exercising any termination right under **Article 11** (and pursuing Damages after such termination), nor shall the commencement of any legal Proceeding pursuant to this **Section 14.13** or anything set forth in this **Section 14.13** restrict or limit any party's right to terminate this Agreement in accordance with the terms of **Article 11** or pursue any other remedies under this Agreement that may be available then or thereafter. For the avoidance of doubt, the Buyer Parties acknowledge and hereby agree that ABI may pursue both a grant of specific performance and the Drag-Along Right, provided that ABI shall not be permitted or entitled to receive both a grant of specific performance and to consummate a Participatory Transaction. Unless the Closing has occurred, ABI's right to specific performance contained in **Section 14.13** and its rights pursuant to the Drag-Along Right in **Section 12.5(b)** shall be its sole and exclusive remedy for any Breach or threatened Breach of this Agreement by the Buyer Parties.

14.14 Obligations of ABI and Seller. Whenever this Agreement requires Seller to take any action, such requirement shall be deemed to include an undertaking on the part of ABI to use reasonable best efforts to cause Seller to take such action (it being understood that ABI shall have no obligation to actually cause Seller to take any action or refrain from taking any action hereunder unless and until the GM Transaction Closing has occurred).

14.15 Adjustments to Transactions. The parties hereto acknowledge that it may become necessary or advisable after the date of this Agreement to adjust or modify the structure of the various transactions described in this Agreement and, subject to **Section 9.1**, agree to cooperate in good faith in order to preserve the economic benefits reasonably expected to be achieved by each of the parties hereto and to consider and, to the extent mutually agreed, effectuate the adjustments or modifications reasonably requested by any other party by amending the terms of this Agreement and/or the other Transaction Documents; **provided that**, subject to **Section 9.1**, no such adjustment or modification shall, in any material respect, adversely affect the rights and obligations of any party under this Agreement or disadvantage any party, or reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by this Agreement, and **further provided that**, subject to **Section 9.1**, ABI shall have the right to amend any term or provision of this Agreement or any other Transaction Document with the consent of the Buyer Parties, which consent shall not be unreasonably withheld or delayed (it being agreed and understood that: (a) it would be unreasonable for the Buyer Parties to withhold, delay or condition their consent if any such amendment is beneficial, or not adverse in any respect, to the rights and obligations of the Buyer Parties hereunder or thereunder; (b) if any of the Seller Parties, Supplier or Marcas Modelo relinquishes any right it may have against the Buyer Parties or the Importer hereunder or under the other Transaction Documents, as applicable, or if the economics of this Agreement or any of the other Transaction

Documents, as applicable, are modified or supplemented to the benefit of the Buyer Parties or the Importer, as applicable, such changes to this Agreement or such other Transaction Document shall be considered as beneficial, and not adverse, to the rights and obligations of the Buyer Parties or the Importer, as applicable, hereunder or under such other Transaction Document; and (c) it would be reasonable for the Buyer Parties to withhold, delay or condition their consent if any such amendment would be materially adverse to the lenders and other Persons providing the Financing). For the avoidance of doubt, if there is any conflict between the terms of this **Section 14.15** and the terms of **Section 9.1**, the terms of **Section 9.1** shall govern.

14.16 Confidentiality. Subject to **Section 14.3(b)**, the terms of the Confidentiality Agreement are incorporated into this Agreement by reference and shall continue in full force and effect until the Closing, at which time the Confidentiality Agreement shall terminate. If, for any reason, the transactions contemplated by this Agreement are not consummated, the Confidentiality Agreement shall nonetheless continue in full force and effect in accordance with its terms.

14.17 References to the Original Purchase Agreement. After giving effect to this Agreement, each reference in the Original Purchase Agreement to "this Agreement", "hereof", "hereunder", "herein" or words of like import referring to the Original Purchase Agreement shall refer to this Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed, as an instrument under seal, as of the date first above written.

CONSTELLATION BEERS LTD.

By: _____
Name: Robert Sands
Title: President

CONSTELLATION BRANDS BEACH HOLDINGS, INC.

By: _____
Name:
Title:

CONSTELLATION BRANDS, INC.

By: _____
Name: Robert Sands
Title: President and CEO

ANHEUSER-BUSCH INBEV SA/NV

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed, as an instrument under seal, as of the date first above written.

CONSTELLATION BEERS LTD.

By: _____
Name:
Title:

CONSTELLATION BRANDS BEACH HOLDINGS, INC.

By: _____
Name: F. Paul Hetterich
Title: President

CONSTELLATION BRANDS, INC.

By: _____
Name:
Title:

ANHEUSER-BUSCH INBEV SA/NV

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed, as an instrument under seal, as of the date first above written.

CONSTELLATION BEERS LTD.

By: _____
Name:
Title:

CONSTELLATION BRANDS BEACH HOLDINGS, INC.

By: _____
Name:
Title:

CONSTELLATION BRANDS, INC.

By: _____
Name:
Title:

ANHEUSER-BUSCH INBEV SA/NV

By: _____
Name: Bob Golden / Jeff Flood
Title: Authorized Representative / Attorney-in-fact

[*Signature Page to Amended and Restated Membership Interest Purchase Agreement*]

EXHIBIT B
TO EXECUTION COPY OF AMENDED AND RESTATED
MEMBERSHIP INTEREST PURCHASE AGREEMENT

ASSIGNMENT OF MEMBERSHIP INTEREST
IN CROWN IMPORTS LLC

THIS ASSIGNMENT OF MEMBERSHIP INTEREST (the "**Assignment**"), effective as of _____, 201_, is made by **GModelo Corporation**, a Delaware corporation (the "**Assignor**"), for the benefit of [Constellation Beers Ltd./Constellation Brands Beach Holdings, Inc.], a [Maryland/Delaware corporation] (the "**Assignee**"), pursuant to that certain Amended and Restated Membership Interest Purchase Agreement, dated as of February 13, 2013 (the "**Purchase Agreement**"), by and among Assignee, [Constellation Beers Ltd./Constellation Brands Beach Holdings, Inc.], a [Maryland/Delaware corporation], Constellation Brands, Inc., a Delaware corporation, and Anheuser-Busch InBev SA/NV, a Belgian corporation. Capitalized terms used and not defined herein have the meanings set forth in the Purchase Agreement.

WHEREAS, Assignor holds 50 Membership Units (as defined in the LLC Agreement) representing fifty percent (50%) of the LLC Interests; and

WHEREAS, pursuant to **Sections 2.1** and **3.2(a)** of the Purchase Agreement and to effect the Closing, Assignor wishes to transfer __ Membership Units to Assignee (the "**Assigned Interest**").

NOW, THEREFORE, in consideration of the foregoing premises and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged:

Assignor hereby sells, assigns, and transfers to Assignee all of its right, title, and interest in and to the Assigned Interest, free and clear of all Liens (other than Permitted Liens), and Assignee does hereby assume to pay, perform and discharge as and when due, and to be bound by all terms, covenants, conditions, liabilities and obligations of Assignor arising from and after the date hereof in respect of the Assigned Interest.

Nothing in this Assignment, express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the Purchase Agreement. To the extent that any provision of this Assignment conflicts or is inconsistent with the terms of the Purchase Agreement, the Purchase Agreement shall govern. This Assignment may be executed in one or more counterparts, including by facsimile signature or other electronic transmission, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

This Assignment and any controversy, dispute or claim arising under or in connection with this Assignment (whether in contract, tort or statute) shall be governed and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws thereof.

IN WITNESS WHEREOF, this Assignment has been duly executed and delivered on behalf of the parties by their duly authorized officers as of the date and year first written above.

ASSIGNOR:

GMODELO CORPORATION

By:_____
Name:
Title:

ASSIGNEE:

[CONSTELLATION BEERS LTD./CONSTELLATION BRANDS BEACH HOLDINGS, INC.]

By:_____
Name:
Title:

Schedule 13.1

Terminated Agreements

1. Agreement to Establish Joint Venture, dated as of the 17th day of July, 2006 and as amended, by and between Barton Beers, Ltd., a corporation incorporated under the laws of the State of Maryland, and Diblo, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico.

2. Barton Contribution Agreement, dated as of the 17th day of July, 2006 and as amended, by and among Barton Beers, Ltd., Diblo, S.A. de C.V. and Crown Imports LLC.

3. Guarantee of Constellation Brands, Inc., dated July 17, 2006.

4. Importer Agreement dated the 2nd day of January, 2007, as amended, by and between Extrade II, S.A. de C.V. and Crown Imports LLC.

5. Letter Agreement dated as of the 17th day of July, 2006, by and between Barton Beers, Ltd., and Diblo, S.A. de C.V.

6. Agreement Regarding Products, dated the 28th day of October, 2010, by and among, Extrade II, S.A. de C.V., Marcas Modelo, S.A. de C.V. and Crown Imports LLC.

7. Administrative Services Agreement, dated the 2nd day of January, 2007, by and between Barton Incorporated and Crown Imports LLC.

8. Interim Management Agreement, dated the 2nd day of January, 2007, by and between Barton Beers, Ltd., and Crown Imports LLC.

9. Employee Services Agreement, dated the 2nd day of January, 2007, by and between Barton Beers, Ltd., and Crown Imports LLC.

EXECUTION COPY

FIRST AMENDMENT TO
AMENDED AND RESTATED
MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "**Amendment**") is made and entered into as of April 19, 2013, and amends that certain Amended and Restated Membership Interest Purchase Agreement, dated as of February 13, 2013 (the "**Original Execution Date**"), by and among **Constellation Beers Ltd.**, a Maryland corporation ("**Constellation Beers**"), **Constellation Brands Beach Holdings, Inc.**, a Delaware corporation ("**CBBH**"), **Constellation Brands, Inc.**, a Delaware corporation ("**CBI**"), and **Anheuser-Busch InBev SA/NV**, a Belgian corporation ("**ABI**") (the "**Agreement**").

W I T N E S S E T H

WHEREAS, on July 17, 2006, Diblo, S.A. de C.V., a Mexican *sociedad anónima de capital variable* ("**Diblo**"), and Constellation Beers (then known as Barton Beers, Ltd.) agreed to establish and engage in a joint venture, Crown Imports LLC, a Delaware limited liability company (the "**Importer**"), for the principal purpose of importing, marketing and selling beer packaged in containers bearing one or more of the trademarks belonging to Grupo Modelo, S.A.B. de C. V., a *sociedad anónima bursátil de capital variable* organized under the laws of Mexico ("**Grupo Modelo**"), or one of its Affiliates;

WHEREAS, GModelo Corporation, a Delaware corporation and a Subsidiary of Grupo Modelo ("**Seller**"), and Constellation Beers are parties to that certain Amended and Restated Limited Liability Company Agreement of Crown Imports LLC, dated as of January 2, 2007 (as amended through June 28, 2012, the "**LLC Agreement**");

WHEREAS, Seller holds fifty percent (50%) of the limited liability company membership interests (the "**LLC Interests**") of the Importer (the limited liability company membership interests owned by Seller, the "**Importer Interest**");

WHEREAS, on February 13, 2013, Constellation Beers, CBBH, CBI and ABI enterered into the Agreement, pursuant to which ABI shall cause Seller to divest, and CBI shall cause Constellation Beers and CBBH to acquire, the Importer Interest; and

WHEREAS, the undersigned, being all of the parties to the Agreement, desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree to amend the Agreement as follows:

1. Capitalized terms used but not otherwise defined herein or in any exhibit attached hereto shall have the meanings given to them in the Agreement.

2. Section 12.5(b)(i) of the Agreement is hereby deleted in its entirety and replaced with the following:

> (i) If the Seller Parties determine to sell the Entire Importer Interest to the Alternative Purchaser pursuant to a sale under this **Section 12.5(b)** (such a sale, a "**Participatory Transaction**"), then upon fifteen (15) days' prior written notice from the Seller Parties (the "**Drag-Along Notice**"), which notice shall include, in reasonable detail, the terms and conditions of the Participatory Transaction, including the time and place of closing and the aggregate purchase price for the Entire Importer Interest, the Buyer Parties shall be obligated to, and shall, on the same terms and conditions specified in the Drag-Along Notice, sell, transfer and deliver, or cause to be sold, transferred and delivered, to the Alternative Purchaser, the CBI Interest in the same transaction at the closing of the Participatory Transaction (and will deliver certificates or assignments for the CBI Interest at such closing, free and clear of all claims, liens and encumbrances subject to customary exceptions); provided that, the Buyer Parties shall only be required to make representations and warranties relating to due organization of Buyer Parties, brokers, non-contravention, title and ownership of, and authority to sell the CBI Interest and shall only be required to provide indemnification to the Alternative Purchaser (which shall be capped at the net cash proceeds received by the Buyer Parties in the transaction and shall be on a pro rata basis with the Seller Parties' indemnification obligations and subject to any limitations on the Seller Parties' obligations to indemnify the Alternative Purchaser (including any caps on indemnification obligations)) for breaches of such representations and warranties and any covenants that both the Seller Parties and the Buyer Parties are required to make.

3. Exhibit A to the Agreement is hereby deleted in its entirety and replaced with Exhibit A attached hereto.

4. (a) All references in the Agreement to "the date hereof", "herein" or "the date of this Agreement" shall refer to the Original Execution Date and (b) the date on which the representations and warranties set forth in Articles IV and V of the Agreement are made by ABI, Constellation Beers, CBBH or CBI shall not change as a result of the execution of this Amendment and shall be made as of such dates as they were in the Agreement, in each of cases (a) and (b), unless expressly indicated otherwise in this Amendment.

5. Except as expressly provided above, all terms and conditions of the Agreement shall remain unchanged and in full force and effect.

6. THIS AMENDMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF TO THE EXTENT THAT SUCH PRINCIPLES WOULD DIRECT A MATTER TO ANOTHER JURISDICTION. The parties hereby irrevocably submit to the personal jurisdiction of the courts of the State of Delaware and the Federal courts of the United States of America located in the State of Delaware solely in respect of the interpretation and enforcement of the provisions of this Amendment, and in respect

of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or Proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or Proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Amendment may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims relating to such action, Proceeding or transactions shall be heard and determined in such a Delaware State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and, to the extent permitted by Law, over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or Proceeding in the manner provided in Section 14.3 of the Agreement or in such other manner as may be permitted by Law shall be valid and sufficient service thereof.

7. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AMENDMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AMENDMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH 4.

8. This Amendment may be executed in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, and all of which, taken together, shall be deemed to constitute one and the same instrument. This Amendment may be executed by facsimile signature.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly caused this Amendment to be executed, as an instrument under seal, as of the date first above written.

CONSTELLATION BEERS LTD.

By: _____
Name: Thomas J. Mullin
Title: Executive Vice President

CONSTELLATION BRANDS BEACH HOLDINGS, INC.

By: _____
Name: Perry R Humphrey
Title: Vice President

CONSTELLATION BRANDS, INC.

By: _____
Name: Thomas J. Mullin
Title: Executive Vice President

ANHEUSER-BUSCH INBEV SA/NV

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have duly caused this Amendment to be executed, as an instrument under seal, as of the date first above written.

CONSTELLATION BEERS LTD.

By: _____
Name:
Title:

CONSTELLATION BRANDS BEACH HOLDINGS, INC.

By: _____
Name:
Title:

CONSTELLATION BRANDS, INC.

By: _____
Name:
Title:

ANHEUSER-BUSCH INBEV SA/NV

By: _____
Name:
Title: Benoit Loore
VP Legal Corporate & Compliance

By: _____
Name: A. RANDON
Title: VP. CONTROL

[*Signature Page to First Amendment to Amended and Restated Membership Interest Purchase Agreement*]

EXHIBIT A

FORM OF INTERIM SUPPLY AGREEMENT

EXHIBIT A
TO FIRST AMENDMENT TO AMENDED AND RESTATED MEMBERSHIP INTEREST PURCHASE AGREEMENT

INTERIM SUPPLY AGREEMENT

between

GRUPO MODELO, S.A.B. DE C.V.

and

CROWN IMPORTS LLC

Dated: _____, 2013

INTERIM SUPPLY AGREEMENT

This Interim Supply Agreement ("**Agreement**"), dated this __ day of _____, 2013, is by and between Grupo Modelo, S.A.B. de C.V. ("**Supplier**"), and Crown Imports LLC, a Delaware limited liability company ("**Crown**").

WITNESSETH:

WHEREAS, pursuant to the Brewery Purchase Agreement Constellation has purchased the Piedras Negras brewery located in Coahuila, Mexico;

WHEREAS, Supplier has agreed to sell to Crown a portion of its requirements for Products subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.1 For purposes of this Agreement, the following terms have the meanings set forth below:

"**Affiliate**" of any Person means any other Person which, directly or indirectly, controls or is controlled by that Person, or is under common control with that Person. For purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**ABI**" means Anheuser-Busch, InBev NV/SA.

[****]

"**Beer**" means beer, ale, porter, stout, malt beverages, and any other versions or combinations of the foregoing, including, without limitation, non-alcoholic versions of any of the foregoing.

"**Brewery**" means the Piedras Negras Plant as that term is defined in the Brewery Purchase Agreement.

"**Brewery Expansion Plan**" means Future Expansion as that term is defined in the Brewery Purchase Agreement.

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

"**Brewery Purchase Agreement**" means that certain Stock Purchase Agreement dated as of February 13, 2013, pursuant to which Constellation agreed to purchase, or cause to be purchased by its designee(s), all of the issued and outstanding shares of capital stock of Compañia Cervecera de Coahuila, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico, and all of the issued and outstanding shares of capital stock of Servicios Modelo de Coahuila, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico.

"**Business Day**" means any day, other than Saturday, Sunday or a day on which banking institutions in New York, New York, Chicago, Illinois, or Mexico City, Mexico are authorized or obligated by law to close.

"**Case**" means (1) units aggregating approximately 288 ounces (except with respect to CORONITA in which instance such units shall aggregate approximately 168 ounces) plus (2) their Containers.

"**Change of Control**" means (i) any Prohibited Owner or Person controlled by a Prohibited Owner becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that such Prohibited Owner or Person shall be deemed to have beneficial ownership of all shares that such Prohibited Owner or Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time) of all or any portion of any class of capital stock or equity interests (including partnership interests) then outstanding of Crown; provided, that, no such Prohibited Owner or Person shall be considered to be a beneficial owner of any class of capital stock or equity interests (including partnership interests) of Crown solely as a result of being a beneficial owner of Voting Stock of Constellation, (ii) any Prohibited Owner or Person controlled by a Prohibited Owner becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that such Prohibited Owner or Person shall be deemed to have beneficial ownership of all shares that such Prohibited Owner or Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time) of all or any portion of any class of capital stock or equity interests (including partnership interests) then outstanding of the Company; provided, that, no such Prohibited Owner or Person shall be considered to be a beneficial owner of any class of capital stock or equity interests (including partnership interests) of the Company solely as a result of being a beneficial owner of Voting Stock of Constellation, (iii) any Prohibited Owner or Person controlled by a Prohibited Owner becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the voting power of the total outstanding Voting Stock of Constellation; (iv) any Prohibited Owner or Person controlled by a Prohibited Owner becomes a member of Crown or shareholder of the Company; or (v) a sale of all or substantially all of the assets of Crown to any Prohibited Owner or Person controlled by a Prohibited Owner.

"**Company**" means Constellation Beers, Ltd.

"**Confidential Information**" means all information and materials regarding the business of either party that are identified in writing as being confidential, including (whether or not identified in writing as being confidential for any of the following) business plans, financial information, historical financial statements, financial projections and budgets, historical and projected sales, pricing strategies and other pricing information, marketing plans, research and

consumer insights, capital spending budgets and plans, the names and backgrounds of key personnel, personnel policies, plans, training techniques and materials, organizational strategies and plans, employment or consulting agreement information, customer agreements and information (including for distributors or retailers), names and terms of arrangements with vendors or suppliers, or other similar information. "**Confidential Information**" does not include, however, information which (i) is or becomes generally available to the public other than as a result of a breach by the receiving party (or its Affiliates) of its obligations of confidentiality and non-use set forth herein, (ii) was available to the receiving party or its Affiliates on a non-confidential basis prior to its disclosure by the disclosing party, or (iii) becomes available to the receiving party on a non-confidential basis from a person other than Crown or any of its Affiliates.

"**Constellation**" means Constellation Brands, Inc. and shall include any successor thereto.

"**Container**" means the bottle, can, keg, or similar receptacle in which Product is directly placed, and the box, carton or similar item in which such receptacle is packaged.

"**CPA Firm**" means Ernst & Young LLP or if Ernst & Young LLP is unable to serve as contemplated hereunder, such other nationally recognized accounting firm reasonably acceptable to Supplier and Crown.

"**CPI**" means, [****]

"**CPI Adjustment**" means, [****]

[****]

"**Crown**" has the meaning assigned to that term in the Preamble

"**Designated Brewery**" means, with respect to any Product, the brewery at which Grupo Modelo or its Subsidiaries produce such Product for sale to Crown.

"**DOJ**" means the United States Department of Justice Antitrust Division or any authorized representatives thereof.

"**Eligible Supplier**" has the meaning assigned to that term in **Section 1.1** of the Sub-License Agreement.

"**Excess**" means, for any three month period described in **Exhibit B** the amount of Products purchased and sold hereunder exceeding the Volume Threshold.

"**Exchange Act**" means the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder, in each case, as amended.

"**Extended Storage**" has the meaning assigned to that term in **Section 4.1(b)**.

"**Extension Period**" has the meaning assigned to that term in **Section 8.1**.

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

"**Final Judgment**" means the proposed Final Judgment filed on April [●], 2013 in United States v. Anheuser-Busch InBev SA/NV and Grupo Modelo S.A.B. de C.V., Case 1:13-cv-00127 (Hon. Richard W. Roberts), as such proposed Final Judgment may be modified by agreement of the parties in that action with the approval of any court of law or equity of competent jurisdiction.

"**Fiscal Year**" means the twelve-month period commencing on March 1 and ending on the last day of February of the next calendar year.

"**FOB**" means "free on board" the Designated Brewery; meaning for purposes of this Agreement that (i) Supplier shall bear the expense and risk of loss of transporting Product to the Designated Brewery and (ii) that title to Product shall pass from Supplier to Crown at the Designated Brewery.

"**Force Majeure**" means the inability, after giving effect to the allocation requirements of **Section 2.1**, of Supplier to supply Product pursuant to **Article II** as a direct result of: acts of God; strikes or other labor unrest; civil disorder; fire; explosion; perils of the sea; flood; drought; war; riots; sabotage; terrorism; accident; embargo; priority, requisition or allocation mandated by governmental action; changes in laws or regulations, or the enforcement or interpretation thereof, that impair the Production or export of Beer into the Territory; shortage or failure of supply of ingredients or raw materials necessary to produce Product; or other cause beyond control of Supplier or the Modelo Group. The duration of any Force Majeure occurrence is limited to the period during which Supplier is unable to supply Product, or make reasonable alternative arrangements to supply Product, due to the event or condition giving rise to such Force Majeure occurrence.

"**GAAP**" means generally accepted accounting principles, consistently applied.

"**Grupo Modelo**" means Grupo Modelo, S.A.B. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico.

"**herein**" and "**hereunder**" refer to this entire Agreement.

"**Import Business**" means importing, marketing and selling the Products and directly related activities in the Territory hereunder.

"**law**", unless otherwise expressly stated in this Agreement, includes statutes, regulations, decrees, ordinances and other governmental requirements, whether federal, state, local or of other authority.

"**Marcas Modelo**" means Marcas Modelo, S.A. de C.V., a sociedad anónima de capital variable organized under the laws of Mexico.

"**Modelo Group**" means Grupo Modelo and all Persons that, now or in the future, are related to Grupo Modelo by virtue of Grupo Modelo's direct or indirect share ownership, and any Affiliates thereof, and ABI, Anheuser-Busch Companies, LLC, Anheuser-Busch International, Inc., Anheuser-Busch International Holdings, LLC, and any of their respective Affiliates.

"**New Physical Unit**" means any Physical Unit added since June 28, 2012 to the Importer Agreement, dated as of January 2, 2007, between Extrade II, S.A. de C.V. and Crown, as amended.

"**Permitted Holders**" means (a) Marilyn Sands, her descendants (whether by blood or adoption), her descendants' spouses, her siblings, the descendants of her siblings (whether by blood or adoption), Hudson Ansley, Lindsay Caleo, William Caleo, Courtney Winslow, or Andrew Stern, or the estate of any of the foregoing Persons, or The Sands Family Foundation, Inc., (b) trusts which are for the benefit of any combination of the Persons described in clause (a), or any trust for the benefit of any such trust, or (c) partnerships, limited liability companies or any other entities which are controlled by any combination of the Persons described in clause (a), the estate of any such Persons, a trust referred to in the foregoing clause (b), or an entity that satisfies the conditions of this clause (c).

"**Person**" means any individual, corporation, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, a company with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal representative, regulatory body or agency, government or governmental agency, authority or entity, however designated or constituted.

"**Physical Unit**" means the shipping unit of a Product set forth on the Price Sheet. For example, the Physical Unit for (a) Corona Extra six pack in cans is four such six-packs of 12 oz. cans, (b) Corona Extra twelve pack bottles is two such twelve packs of 12 oz. bottles, (c) Coronita six pack bottles is four such six-packs of 7 oz. bottles, and (d) Corona Light Quarter-barrel Slim is one such Quarter-barrel Slim.

"**Prohibited Owner**" means Carlsberg Breweries A/S, Heineken Holding NV, SABMiller plc, Molson Coors Brewing Company, Miller Coors LLC, any of their respective controlled Affiliates and any successor of any of the foregoing, or any Person (other than a Subsidiary of Constellation or a Permitted Holder) owning, distributing or brewing Beer brands of which 275 million Cases or more were sold in the Territory during the calendar year ended immediately prior to the determination of whether such Person is a Prohibited Owner.

"**Price**" has the meaning assigned to that term in **Section 3.1**.

"Price Sheet" means that certain Price Sheet agreed to by ABI and Constellation on June 28, 2012, plus any Physical Units added since that date to the Importer Agreement, dated as of January 2, 2007, between Extrade II, S.A. de C.V. and Crown, as amended.

"**Product**" means Beer packaged in Containers bearing one or more of the Trademarks and sold to Crown pursuant to this Agreement and as described on the Price Sheet.

"**Production**" means the manufacturing, bottling and packaging of Beer.

"**Requirements**" means all Products required by Crown for delivery and sale to its customers in the Territory.

"**Requisite Licenses**" has the meaning assigned to that term in **Section 6.1**.

"**saleable**" has the meaning assigned to that term in **Section 4.1(b)**.

"**SKU**" for any Product means the Physical Unit in which it is sold by Supplier to Crown. Any difference in the Containers for a Product (whether in size, shape or materials), secondary packaging for the Containers, quantities of Containers contained in the secondary packaging, configurations of Containers contained in the secondary packaging or other distinct attributes in a configuration shall be considered to be a separate SKU.

"**Sub-license Agreement**" means the Amended and Restated Sub-license Agreement dated as of the date hereof by and between Constellation Beers Ltd. and Marcas Modelo.

"**Subsidiary**" means, with respect to any Person, a corporation, partnership, joint venture, limited liability company, trust, estate or other Person of which (or in which), directly or indirectly, more than fifty percent (50%) of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors, managers or others performing similar functions of such entity (irrespective of whether at the time capital stock of any other class or classes of such entity shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such partnership, joint venture or limited liability company or other Person or (c) the beneficial interest in such trust or estate is at the time owned by such first Person, or by such first Person and one (1) or more of its other Subsidiaries or by one (1) or more of such Person's other Subsidiaries.

"**Supplier**" has the meaning assigned to that term in the Preamble.

"**Territory**" has the meaning assigned to that term in **Section 1.1** of the Sub-License Agreement.

"**Trademarks**" has the meaning assigned to that term in **Section 1.1** of the Sub-License Agreement.

"**Transition Services Agreement**" means the Transition Services Agreement dated as of the date hereof between ABI and Constellation.

"**unsaleable**" has the meaning assigned to that term in **Section 4.1(b)**.

"**Volume Threshold**" means, with respect to any three month period described in **Exhibit B**, a number of hectoliters equal to forty percent (40%) of the Requirements for such three month period.

"**Voting Stock**" means (i) with respect to a corporation, the stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect or appoint at least a majority of the board of directors or trustees of such corporation (irrespective of whether or not at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency) and (ii) with respect to a partnership, limited liability company or business entity other than a corporation, the equity interests thereof.

1.2 Construction

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article", "Section", "Schedule" or "Exhibit" refer to the specified Article, Section, Schedule or Exhibit of this Agreement, unless otherwise specifically stated; (v) the words "include" or "including" shall mean "include, without limitation" or "including, without limitation;" and (vi) the word "or" shall be disjunctive but not exclusive.

(b) Unless the context otherwise requires, references to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto.

(c) Unless the context otherwise requires, references to statutes shall include all regulations promulgated thereunder and, except to the extent specifically provided below, references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(d) The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. This Agreement is the joint drafting product of the parties hereto and each provision has been subject to negotiation and agreement and shall not be construed for or against any party as drafter thereof.

(e) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(f) All amounts in this Agreement are stated and shall be paid in United States dollars.

ARTICLE II
SUPPLY OF PRODUCT LINE

2.1 (a) On and after the date hereof, subject to **Section 5.1**, Supplier shall be obligated to supply to Crown during each calendar year the Requirements not supplied by the Brewery and Eligible Suppliers. In the event members of the Modelo Group from which Supplier purchases Product do not have sufficient quantities of Beer of the brands subject to this Agreement and produced in Mexico to supply all their domestic and export customers (including, without limitation, for adequate inventory purposes), allocation of Beer of such brands shall be made no less favorably to Crown (through Supplier) for importation and sale within the Territory than to any other customers of such members of the Modelo Group or markets, including the domestic market of Mexico.

(b) In producing and packaging the Products, Supplier shall comply with its customary and established quality standards, and applicable law, including the law of any State in the Territory in which the Products are sold.

2.2 All orders for Product under this Agreement shall be made by Crown specifying the type of Product ordered and the quantities thereof. Subject to **Section 2.1** and Force Majeure, each such order shall constitute a binding obligation between Crown and Supplier in accordance with the terms of this Agreement five (5) days after receipt thereof by Supplier on the terms of the order, subject to modifications that the parties agree to within such five-day period.

2.3 EXCEPT AS STATED IN THIS AGREEMENT, SUPPLIER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING PRODUCT.

2.4 Supplier will supply Product to Crown FOB the Designated Brewery (whether rail or other transportation as requested by Crown). Subject to Force Majeure, all Product to be supplied to Crown by Supplier pursuant to an order under **Section 2.2** shall be delivered within thirty (30) days of final Production, and (i) in no event more than thirty (30) days after the end of the calendar month in which such order is to be filled under **Section 2.5** and (ii) in a manner consistent in all material respects with the ordinary course of business of the Designated Brewery during the twenty-four (24) months immediately preceding the date hereof. Crown guarantees to Supplier the payment of all freight, customs, handling and other charges incurred with respect to Product after delivery to Crown. Supplier will not charge for packing, boxing or crating a shipment of Product.

2.5 Crown shall use its commercially reasonable efforts to deliver to Supplier not later than the fifth (5^{th}) working day of each calendar month requests covering, in the aggregate, all Product that Crown wishes to purchase from Supplier during the succeeding calendar month or, in the case of Negra Modelo and Corona Light, the second succeeding calendar month. To the extent compatible with Crown's resale prospects and each party's obligations under this Agreement, the parties respectively shall use their commercially reasonable efforts to the end that the deliveries contemplated in corresponding orders occur at reasonably uniform volumes and intervals during any Fiscal Year and within each calendar month. Crown shall use its commercially reasonable efforts to maintain adequate inventories and distribution channels to meet its sales responsibilities hereunder without undue pressure on production schedules of the Modelo Group.

2.6 All terms and conditions set forth on any order shall be of no force and effect, other than the type of Product ordered, the quantities ordered and the mode of transportation if other than rail.

2.7 Anything in **Section 2.2** to the contrary notwithstanding, in the event of any conflict between the provisions of any order and the provisions of this Agreement (including without limitation terms of payment and warranties concerning Product), the provisions of this Agreement shall govern.

2.8 In connection with the transportation of Product from the Designated Brewery, Crown shall be responsible for:

(a) Providing Supplier with such information as may be reasonably required by Grupo Modelo to establish the daily and monthly shipping schedules of Designated Breweries;

(b) Monitoring the performance of the daily and monthly shipment schedules established and furnished to Crown by Supplier;

(c) Communicating to carriers the volume of Crown's orders theretofore accepted by Supplier;

(d) Monitoring carriers' adherence to the shipping schedules established by Grupo Modelo;

(e) Assisting Supplier in complying with requirements established by U.S. federal, state and local government agencies;

(f) In coordination with Supplier's Export Department, organizing transportation, designating the transport vehicles and equipment required for the Product to be shipped from the Designated Brewery and ordering such vehicles (Crown to be responsible for ordering the transportation and equipment vehicles from the transporter; however, Supplier to be responsible for (1) scheduling with the transporter times when the transporter will make transportation vehicles and equipment available as ordered by Crown at the Designated Brewery for loading, (2) making Product available for loading at scheduled times and (3) loading Product on the transportation vehicles so ordered by Crown at scheduled times, which tasks shall be performed by Supplier in a manner no less diligently than performed by Supplier for Crown during the twelve (12) month period immediately preceding the date hereof); and Supplier shall hold Crown harmless with respect to any demurrage or other claims of the transporter against Crown that result from Supplier not performing any of the actions described in clauses 1, 2 and 3 of this **Section 2.8(f)**);

(g) Processing (with the cooperation of Supplier, but without cost to, or liability of, Supplier) insurance and other claims for damage to Product arising after delivery FOB the Designated Brewery (including during any such transportation of such Product after such delivery) and taking the responsibility for destruction of damaged Product in accordance with **Section 4.3**;

(h) Cooperating with Supplier by providing such other assistance as may be reasonably required to effect the shipment of Product as provided in this Agreement;

(i) Not purporting to act in the name of Supplier when arranging for transportation of Product; and

(j) Making certain that no employee or other representative of Crown enters a brewery or other facility of a Designated Brewery or Supplier without use of visitor identification cards issued by such brewery or facility.

2.9 (a) Supplier shall notify Crown in advance of any changes to the country of origin or, other than de minimis changes, to the appearance, color, alcohol content, carbonation level or taste profile of a Product (which for avoidance of doubt shall include the Container thereof). No such changes shall be permitted if any such change would be reasonably likely to be adversely perceptible, without the prior written consent of Crown, which consent shall not be unreasonably withheld or delayed. If such consent is provided, then Crown shall have the right to use up any inventory of Product having the former appearance, color, alcohol content, carbonation level or taste profile or country of origin. If any such change effected pursuant to this subsection without the prior written consent of Crown is adversely perceptible, Supplier shall promptly halt such change and resume production of the Product in its prior state. For purposes of **Sections 2.9(a)** and **(b)**, a change shall be considered to be adversely perceptible if the ordinary average consumer of the Product perceives such change as having a negative effect on the Product.

(b) Supplier shall notify Crown in advance of any changes to the quality or structural integrity of a Container, other than de minimis changes. No such changes shall be permitted if any such change would be reasonably likely to be adversely perceptible or to adversely affect the quality and condition of the Product upon delivery to Crown or to the ultimate consumer, without the prior written consent of Crown, which consent shall not be unreasonably withheld or delayed. If such consent is provided, then Crown shall have the right to use up any inventory of Product packaged in the former Container. If any such change effected pursuant to this subsection without the prior written consent of Crown is adversely perceptible or adversely affects the quality and condition of the Product upon delivery to Crown or to the ultimate consumer, Supplier shall promptly halt such change and resume use of the former Containers.

(c) Supplier shall not discontinue any Product without the prior written consent of Crown, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary in the foregoing, Supplier may discontinue a Product upon at least [****] written notice, without consent of Crown, if the Product is not sold in Mexico and the Product had [****] sales of less than [****] Cases (or if such Product is intended to be sold only in limited regions of the Territory because of regulatory restrictions in such region, for example restrictions relating to the alcohol content of Beer or special deposit requirements, had [****] sales of less than [****] Cases) in the Territory for [****] immediately prior to such discontinuance. If a Product is properly discontinued pursuant to this **Section 2.9(c)** by Supplier, then Crown shall have the right to use up any inventory of such discontinued Product.

2.10 Supplier and Crown will cooperate and use commercially reasonable efforts to reduce their mutual costs of production, shipping and handling of the Products, improve timeliness of delivery and freshness of Products delivered to Crown and reduce damage to Products caused during transit from the breweries to Crown.

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

ARTICLE III
PRICING AND PAYMENT PROCEDURES

3.1 As to each Product, other than New Physical Units, the initial price on the Physical Units described in the Price Sheet to be charged by Supplier commencing on the date of this Agreement shall be stated as the "Price" in the Price Sheet for each Physical Unit, less, for each specified Price, $1.82 per Physical Unit. The initial price for each New Physical Unit shall be the all in transfer price (including [****]) payable by Crown to Extrade II pursuant to the Importer Agreement between such parties for such New Physical Unit as such price is in effect on the date hereof, less $1.82 per New Physical Unit. Prices for Physical Units shall be hereinafter described as "Prices." Prices shall be subject to the adjustments described below.

3.2 Within [****] of determining the "Final EBITDA Amount" (as defined in the Brewery Purchase Agreement), the existing Price for each Physical Unit shall be increased by $1.82 per case and decreased by the quotient of the Final 2012 EBITDA Amount (but in no event higher than $370,000,000) divided by 170,000,000 Cases. The Price Sheet shall then be promptly updated to reflect such adjustment. The revised Price shall be effective on and after the date of such determination, and such revision shall not affect the Price of any Product purchased and sold prior to such determination.

On the [****], the Price for each Product shall be increased or decreased from the Price previously in effect by the CPI Adjustment (including the effect of any adjustment previously effected pursuant to the preceding paragraph).

3.3 (a) Promptly after effecting a shipment of Product to Crown, Supplier shall so notify Crown and provide to Crown an invoice for such shipment. Crown having received such invoice from Supplier shall pay such invoiced price in United States Dollars within [****] days of receipt of such invoice. Crown shall be entitled to a discount of one percent of the Price for Product if (i) payment for such Product is made by Wednesday following the week in which such Product was shipped and (ii) Supplier receives the corresponding payment by wire transfer of immediately available funds to a bank account designated by Supplier. If the Price is not paid on its due date, the unpaid amount shall bear interest from the due date until paid at the rate of 1-1/2% per month or the maximum rate allowed by applicable law, whichever is lower.

(b) During any period in which Crown has not paid the purchase price for any Product delivered and sold hereunder within [****] days of receipt of the invoice thereof, Supplier shall not be obligated to deliver any additional Product hereunder unless Crown has made arrangements satisfactory to Supplier to pay the purchase price for such Product not later than the delivery of such Product to Crown.

(c) At the end of each three-month period following the date hereof, Crown shall make a payment to Supplier, or shall receive a credit against amounts then owing to Supplier, [****] as described on **Exhibit B**.

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

ARTICLE IV
PRODUCT QUALITY

4.1 The following provisions shall apply to Product after Production:

(a) Supplier warrants Product under normal conditions and circumstances to remain suitable for resale and consumption for a period of up to one hundred eighty (180) days from the date of final Production. Supplier further warrants that when received by Crown from Supplier the appearance, color, alcohol content, carbonation level and taste profile of a Product (which for the avoidance of doubt will include the quality and structural integrity of the Container thereof) produced by a Designated Brewery will be consistent in all material respects with the appearance, color, alcohol content, carbonation level and taste profile of a Product (which for the avoidance of doubt will include the quality and structural integrity of the Container thereof) produced by such Designated Brewery and received by Crown from Supplier during the twenty-four (24) month period immediately prior to the date hereof.

(b) As used herein, "**Extended Storage**" means the elapsing of more than thirty (30) days between the date any Product sold under this Agreement reaches its first storage in the United States of America and the date such Product is received by a retailer or other direct purchaser from Crown. Crown acknowledges that it is Supplier's policy to avoid Extended Storage. To the extent permitted by law Crown shall use commercially reasonable efforts to support said policy. Either party may, at its option and sole expense, at any time, cause J.E. Siebel Sons' Company, Inc. (or any other third-party investigator approved in writing by Supplier and Crown) to examine samples of any quantity of Product (and the corresponding Containers) sold under this Agreement and in the possession of Crown or any retailer or other purchaser for resale, and to advise Crown and Supplier in writing whether the Product so examined is suitable for resale and consumption (hereinafter called "**saleable**"). In the event such Product is so determined not to be saleable (hereinafter called "**unsaleable**"):

1. Crown shall, upon written request from Supplier, be obligated to arrange for the destruction of unsaleable Product and replace the same with saleable Product and may otherwise do so at its option.

2. Supplier shall bear the cost of any such destruction and cost of replacement of such Product at laid-in cost to Crown, to the extent such Product is unsaleable due to a breach of Supplier's warranty in **Section 4.1(a)**.

3. In the event Supplier requests such destruction and the Product is not unsaleable due to a breach of Supplier's warranty in **Section 4.1(a)**, then Crown shall bear the cost of such destruction and replacement.

4.2 In the event Product or a Container is damaged in transit after same is delivered FOB the Designated Brewery for a period up to one hundred eighty (180) days from the date of final Production, whether prior to or after the time same leaves Mexico, Crown shall so inform Supplier and shall cooperate with Supplier as to (1) whether the corresponding Product or Container should be destroyed because the damage has rendered the Product or Container unsaleable, and, if so, (2) the time, place and manner of such destruction, provided that

Supplier shall indemnify Crown for any losses, costs or expenses incurred by Crown relating to any such destruction not covered by insurance.

4.3 If Crown destroys any Product pursuant to **Section 4.1** or **4.2**, an authorized officer of Crown shall execute and deliver to Supplier a certificate in the form of **Exhibit A** certifying as to such destruction, and Supplier shall cooperate with Crown to accomplish any such destruction but, except as otherwise provided in **Section 4.1(b)**, Crown shall be responsible for all costs of such destruction. In addition, any insurance policy of Crown covering Product shall require the insurer issuing such policy not to take any action inconsistent with the terms of **Sections 4.1** and **4.2**. Upon obtaining any such insurance policy, Crown shall promptly furnish Supplier with a copy of the same.

ARTICLE V
REPORTS

5.1 Crown shall deliver to Supplier the following:

(a) Not later than sixty (60) days prior to the beginning of each Fiscal Year, a Forecast Report in the electronic form customarily provided by Crown to Supplier indicating by calendar months the purchases of Product Crown expects to make during such year under this Agreement by brand, label, package and any other distinguishing presentation required by governmental authorities.

(b) Not later than twenty (20) days prior to the beginning of each calendar month, a Forecast Report Update in the electronic form customarily provided by Crown to Supplier updating, for the calendar months remaining in such year, the Forecast Report originally delivered for the corresponding Fiscal Year.

(c) Crown shall be obligated to purchase not less than [****] of the amount forecast in each Forecast Report Update for the first calendar month next succeeding such Forecast Report Update and Supplier shall not be obligated to sell to Crown more than [****] of the amount forecast for such calendar month, and Crown shall be obligated to purchase not less than [****] of the amount forecast in each Forecast Report Update for the second calendar month next succeeding such Forecast Report Update and Supplier shall not be obligated to sell to Crown more than [****] of the amount forecast for such calendar month.

(d) For January of each Fiscal Year, Crown shall be obligated to purchase not less than [****] of the amount forecast in the respective Forecast for such month and Supplier shall not be obligated to sell to Crown more than [****] of the amount forecast for such month and, subject to the rights and obligations of Crown and Supplier arising out of the Forecast Report Update as described in **Section 5.1(c)**, for February of each Fiscal Year, Crown shall be obligated to purchase not less than [****] of the amount forecast in the respective Forecast for such month and Supplier shall not be obligated to sell to Crown more than [****] of the amount forecast for such month.

[****] Confidential Information redacted pursuant to the Stipulated Protective Order.

5.2 Crown shall deliver each report required by **Section 5.1** by such means of electronic transmission or delivery as Supplier may reasonably request from time to time.

5.3 Supplier may at its own expense, upon reasonable advance notice to Crown, through accountants or other representatives designated by Supplier for such purposes, enter during normal business hours any storage facility or business office owned or controlled by Crown and examine such facilities, inventories and that portion of the books and records of Crown needed to determine the accuracy of any report delivered under, or compliance by Crown with, this Agreement. Crown may at its own expense, upon reasonable advance notice to Supplier, through accountants or other representatives designated by Crown for such purposes, enter during normal business hours any storage or production facility or business office owned or controlled by Supplier and examine such facilities, inventories and that portion of the books and records of Supplier needed to determine compliance by Supplier with this Agreement; provided that any such access on behalf of Supplier or Crown to confidential information, data and work papers shall be provided solely to such accounting firm on a clean room basis and such accounting firm shall not have the right to provide any such confidential information, or any summaries thereof, to Crown or Supplier, as the case may be, or any of its Affiliates.

5.4 (a) Unless otherwise agreed to in writing by Crown, Supplier agrees (and Supplier agrees to cause its Affiliates) (a) to keep confidential all Confidential Information of Crown and not to disclose or reveal any of such Confidential Information to any Person other than (i) those directors, officers, employees, stockholders, legal counsel, accountants, and other agents of Supplier or its Affiliates who are actively and directly participating in the performance of the obligations and exercise of the rights of Supplier under this Agreement, and (b) not to use Confidential Information of Crown for any purpose other than in connection with the performance of the obligations and exercise and enforcement of the rights of Supplier hereunder. The obligation to maintain confidentiality of and restrictions on the use of Confidential Information hereunder, shall include with respect to any Confidential Information obtained by Supplier and its Affiliates prior to the date hereof.

(b) If Supplier is required by law, court order or government order or regulation to disclose Confidential Information, Supplier shall provide notice thereof to Crown and, after consultation with Crown and, at the sole cost and expense of Crown, reasonably cooperating with Crown to object to or limit such disclosure, shall be permitted to disclose only that Confidential Information so required to be disclosed.

5.5 Unless otherwise agreed to in writing by Supplier, Crown agrees (and Crown agrees to cause its Affiliates) (a) to keep confidential all Confidential Information of Supplier and the Modelo Group and not to disclose or reveal any of such Confidential Information to any Person other than (i) those directors, officers, employees, stockholders, legal counsel, accountants, and other agents of Crown or its Affiliates who are actively and directly participating in the performance of the obligations and exercise of the rights of Crown under this Agreement, and (b) not to use Confidential Information of Supplier and the Modelo Group for any purpose other than in connection with the performance of the obligations and exercise and enforcement of the rights of Crown hereunder. The obligation to maintain confidentiality

of and restrictions on the use of Confidential Information hereunder, shall include with respect to any Confidential Information obtained by Crown prior to the date hereof.

If Crown is required by law, court order or government order or regulation to disclose Confidential Information, Crown shall provide notice thereof to Supplier and, after consultation with Supplier and, at the sole cost and expense of Supplier, reasonably cooperating with Supplier to object to or limit such disclosure, shall be permitted to disclose only that Confidential Information so required to be disclosed.

5.6 The parties agree that the confidential information of Crown relating to pricing or sales is competitively sensitive, and Supplier shall establish, implement and maintain procedures and take such other steps that are reasonably necessary to prevent any disclosure of such information to its employees and those of its Affiliates who have direct responsibility for marketing, distributing or selling Beer (other than the Products) in the United States.

ARTICLE VI
COMPLIANCE WITH LAWS

6.1 During the term of this Agreement, Crown shall obtain and maintain in good standing, or otherwise have valid access to, all U.S. (federal and state) licenses required for the performance of this Agreement by Crown, including without limitation all licenses required for the importation or sale of Product in the Territory ("**Requisite Licenses**"). Within thirty (30) days after the amendment, loss or new issuance of any Requisite License (other than ordinary course annual or other renewals or amendments), Crown shall deliver to Supplier written notice thereof.

6.2 Crown agrees (a) to comply with all laws applicable to the selling of Product, including, without limitation, those relating to labels and identifying marks on Containers, and to comply with the Foreign Corrupt Practices Act and similar laws applicable to Crown or the Import Business and (b) not to commit any act that will subject Supplier to any civil, criminal, or other liability. Crown agrees to indemnify and hold Supplier harmless with respect to any breach by Crown of the preceding sentence.

6.3 As regards laws relating to labels or other identifying marks on Containers supplied by Supplier, Crown shall be deemed to have fully satisfied Crown's obligations if, within a reasonable period prior to Supplier's shipment of Product identified by any new form of label or mark, Crown obtains approval of the labels or marks to be used on such Container and advises Supplier fully and correctly in writing of all requirements of corresponding law. After receipt from Crown of such written advice, Supplier shall be responsible for the labeling and marking of Containers in conformity with such advice.

6.4 As and when requested by Crown, Supplier shall use its commercially reasonable efforts to sign and deliver to Crown such documents as Crown requires for filing with governmental authorities to comply with laws applicable to the importation or sale of Product.

6.5 Supplier and Crown agree that the federal and state laws governing the rights and obligations of brewers or suppliers of Beer and their wholesalers shall not apply as between themselves in connection with the transactions described herein.

ARTICLE VII
INDEMNIFICATION AND INSURANCE

7.1 Crown agrees to indemnify and hold harmless Supplier from and against any and all claims, losses, liabilities, costs and expenses (including reasonable fees and disbursements of attorneys) arising out of any resale of any damaged or unsaleable Product by Crown. Supplier agrees to indemnify and hold harmless Crown from and against, any and all claims, losses, liabilities costs and expenses (including reasonable fees and disbursements of attorneys) arising (a) out of any failure to label and mark Containers supplied by Supplier in conformity with law or (b) out of any actual or alleged defect in the manufacture of Product or Containers supplied by Supplier, including but not limited to those based on or resulting from damages actually or allegedly caused to persons or the property of third parties by reason of any such failure or defect. The provisions of this **Section 7.1** shall survive the expiration or other termination of this Agreement with respect to any claim, loss, liability, cost or expense, whenever incurred or asserted, arising out of any act, omission or condition that preceded such expiration or termination.

7.2 Crown represents to Supplier that (a) Crown shall maintain at all times during the term of this Agreement with a reputable insurance company domiciled in the United States of America a multiperil policy covering (subject to customary deductibles) liability to third parties for personal injury in such amounts (both aggregate and per occurrence) as may be customary in the Beer industry in the United States of America, but not less than $10,000,000.00, and for property damage in such amounts (both aggregate and per occurrence) as may be customary in the Beer industry in the United States of America, but not less than $10,000,000.00, arising from the importation and sale of Product under this Agreement, together with excess liability insurance, in umbrella form, with limits of at least $5,000,000 for each occurrence with no aggregate limit, and (b) Crown will maintain such policy naming Supplier as an additionally insured party (or a replacement insurance policy providing no less coverage which is obtained from a reputable insurance company domiciled in the United States of America) in effect so long as this Agreement remains in force.

7.3 Supplier represents to Crown (a) that Supplier shall maintain at all times during the term of this Agreement with a reputable insurance company similar insurance covering (subject to customary deductibles) liability to third parties for personal injury in such amounts (both aggregate and per occurrence) as may be customary in the Beer industry in Mexico, but not less than $10,000,000.00, and for property damage in such amounts (both aggregate and per occurrence) as may be customary in the Beer industry in Mexico, but not less than $10,000,000.00, arising from the importation and sale of Product under this Agreement, together with excess liability insurance, in umbrella form, with limits of at least $5,000,000 for each occurrence with no aggregate limit, and (b) that Supplier will maintain such policy naming Crown as an additionally insured party (or a replacement insurance policy providing no lesser coverage which is obtained from a reputable insurance company) in effect so long as this Agreement remains in force.

7.4 With respect to the insurance described in **Sections 7.2** and **7.3**, (a) each party shall pay all costs and expenses of the insurance it carries, and (b) each party shall promptly deliver to the other, at the request of the other, a copy of the insurance policies and other documentation evidencing compliance with such party's obligations to maintain such insurance.

ARTICLE VIII
TERM; TERMINATION

8.1 (a) Except as provided below, the term of this Agreement shall commence on the date hereof and shall terminate on the third anniversary hereof. For the avoidance of doubt, any extensions provided below are subject to the approval by the DOJ pursuant to the Final Judgment.

(b) If Crown and its Affiliates have not completed the Brewery Expansion Plan on or prior to on the third anniversary hereof, Crown may provide written notice to Supplier not later than one hundred twenty (120) days prior to such date stating that despite the reasonable efforts of Crown and its Affiliates to complete such Brewery Expansion Plan, which statement shall not be subject to review or challenge by Supplier, continuing supply of Product is required, the terms and provisions of this Agreement shall continue for an additional year, or such lesser period as Crown may set forth in the notice. Prior to the DOJ's decision to approve or deny any extension as described in **Section 8.1(a)**, Supplier shall conduct itself as if the extension set forth in any such notice from Crown will be permitted by the DOJ.

(c) If Crown and its Affiliates have not completed the Brewery Expansion Plan on or prior to the end of any additional term implemented pursuant to **Section 8.1(b)**, Crown may provide written notice to Supplier not later than one hundred twenty (120) days prior to the end of such additional term stating that despite the reasonable efforts of Crown and its Affiliates to complete such Brewery Expansion Plan, which statement shall not be subject to review or challenge by Supplier, continuing supply of Product is required, the terms and provisions of this Agreement shall continue for an additional year, or such lesser period as Crown may set forth in the notice. Prior to the DOJ's decision to approve or deny any extension as described in **Section 8.1(a)**, the Supplier shall conduct itself as if the extension set forth in any such notice from Crown will be permitted by the DOJ.

(d) Under no circumstances shall the term of this Agreement exceed five (5) years.

8.2 Supplier may terminate this Agreement upon written notice to Crown following a Change of Control. Any such termination shall become effective on the sixtieth (60^{th}) day after delivery of such notice to Crown.

8.3 Upon expiration of this Agreement, the obligations of the parties to supply and purchase Products shall terminate, but all rights and obligations accrued or relating to periods prior to the date of expiration shall continue and remain in full force and effect.

ARTICLE IX
GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its principles of conflicts of laws that would require application of the substantive laws of any other jurisdiction. Crown and Supplier agree that the International Convention on the Sale of Goods shall not apply to this Agreement. Crown and Supplier irrevocably consent to the exclusive personal jurisdiction and venue of the courts of the State of New York or the federal courts of the United States, in each case sitting in New York County, in connection with any action or proceeding arising out of or relating to this Agreement. Crown and Supplier hereby irrevocably waive, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of such action or proceeding brought in such a court and any claim that any such action or proceeding brought in such court has been brought in an inconvenient forum. Crown and Supplier irrevocably consent to the service of process with respect to any such action or proceeding in the manner provided for the giving of notices under **Section 10.4**, provided, the foregoing shall not affect the right of either Crown or Supplier to serve process in any other manner permitted by law. Crown and Supplier hereby agree that a final judgment in any suit, action or proceeding shall be conclusive and may be enforced in any jurisdiction by suit on the judgment or in any manner provided by applicable law.

ARTICLE X
MISCELLANEOUS

10.1 Neither party may assign any right under this Agreement without the prior written consent of the other party, provided that (i) Crown may assign this Agreement and its rights and obligations hereunder to any (A) Subsidiary of Constellation who agrees in writing to be bound by all terms and conditions of this Agreement and in that event such assignee shall be deemed to be Crown for all purposes of this Agreement, or (B) Person to whom Constellation Beers Ltd. assigns the Sub-License Agreement; provided, however, for any other assignment by Crown hereunder (other than to a Prohibited Owner) the prior written consent of Supplier shall not unreasonably be withheld; (ii) Supplier may assign this Agreement and its rights and obligations hereunder to any Subsidiary of ABI and in that event such assignee shall be deemed to be Supplier for all purposes of this Agreement; and (iii) Supplier may assign to one or more Subsidiaries of Grupo Modelo owning a Designated Brewery the rights and obligations hereunder to sell, supply and receive payment for the Product to Crown produced by the respective Designated Brewery, and in that event any such assignee in performing or enforcing such rights and obligations shall be deemed to be Supplier for purposes of this Agreement. Any purported assignment not in strict compliance with the preceding sentence shall be null and void and of no force and effect. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

10.2 The captions used in this Agreement are for convenience of reference only and shall not affect any obligation under this Agreement.

10.3 This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts, taken together, shall constitute one and the same instrument. Signatures sent by facsimile shall constitute and be binding to the same extent as originals. This Agreement may not be amended except by an instrument in writing signed by both parties.

10.4 Any notice, claims, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and will be duly given if: (a) personally delivered, (b) sent by facsimile or (c) sent by Federal Express or other reputable overnight courier (for next Business Day delivery), shipping prepaid as follows:

If to Crown:	Crown Imports LLC One South Dearborn St, Suite 1700 Chicago, IL 60603 Attention: President Telephone: +1 (312) 873-9600 Facsimile: +1 (312) 346-7488
With a copy to (which copy shall not serve as notice hereunder):	Constellation Brands, Inc. 207 High Point Drive, Building 100 Victor, New York 14564 Attention: General Counsel Telephone: +1 (585) 678-7266 Facsimile: +1 (585) 678-7103
With a second copy to (which copy shall not serve as notice hereunder):	Nixon Peabody LLP 1300 Clinton Square Rochester, NY Attention: James O. Bourdeau Telephone: +1 (585) 263-1000 Facsimile: +1 (585) 263-1600
If to Supplier:	Grupo Modelo, S.A.B. de C.V. Av. Javier Barnos Sierra 555-3 Piso Col. Santa Fe 01210 Mexico, D.F. Attention: General Counsel Telephone: + (5255) 2266-0000 Facsimile: + (5255) 2266-0000
With a copy to (which copy shall not serve as notice hereunder):	Anheuser-Busch InBev Brouwerijplein 1 Leuven 3000 Belgium Attention: Chief Legal Officer and Company Secretary Telephone: + 32 16 27 69 42

Facsimile: +32 16 50 66 99

With a second copy to (which copy shall not serve as notice hereunder):
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Frank J. Aquila
George J. Sampas
Krishna Veeraraghavan
Telephone: +1 (212) 558-4000
Facsimile: +1 (212) 558-3588

or such other address or addresses or facsimile numbers as the person to whom notice is to be given may have previously furnished to the others in writing in the manner set forth above. Notices will be deemed given at the time of personal delivery, if sent by facsimile, when sent with electronic notification of delivery or other confirmation of delivery or receipt, or, if sent by Federal Express or other reputable overnight courier, on the day of delivery.

10.5 This Agreement, and the various Schedules and Exhibits thereto, the Membership Interest Purchase Agreement, the Sub-license Agreement, Brewery Acquisition Agreement and the various Schedules and Exhibits thereto, embody all of the understandings and agreements of every kind and nature existing between the parties hereto with respect to the transactions contemplated hereby, and supersede all prior discussions, negotiations and agreements between the parties concerning the subject matter thereof.

10.6 To the extent that any provision of this Agreement is invalid or unenforceable in the Territory or any state or other area of the Territory, this Agreement is hereby deemed modified to the extent necessary to make it valid and enforceable within such state or area, and the parties shall promptly agree in writing on the text of such modification.

10.7 The parties acknowledge that a breach or threatened breach by them of any provision of this Agreement will result in the other entity suffering irreparable harm which cannot be calculated or fully or adequately compensated by recovery of damages alone. Accordingly, the parties agree that any party may, in its discretion (and without limiting any other available remedies), apply to any court of law or equity of competent jurisdiction for specific performance and injunctive relief (without necessity of posting a bond or undertaking in connection therewith) in order to enforce or prevent any violations of this Agreement, and any party against whom such proceeding is brought hereby waives the claim or defense that such party has an adequate remedy at law and agrees not to raise the defense that the other party has an adequate remedy at law. The failure of either party at any time to require performance of any provision of this Agreement shall in no manner affect such party's right to enforce such provision at any later time. No waiver by any party of any provision, or the breach of any provision, contained in this Agreement shall be deemed to be a further or continuing waiver of such or any similar provision or breach.

10.8 This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. Nothing in this Agreement shall give any

other Person any legal or equitable right, remedy or claim under or with respect to this Agreement or the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

GRUPO MODELO, S.A.B. DE C.V.

By:_____
Name:
Title:

By:_____
Name:
Title:

CROWN IMPORTS LLC

By:_____
Name:
Title:

[Signature Page to Interim Supply Agreement]

EXHIBIT A

CERTIFICATE OF OFFICER

All capitalized terms herein are used as defined in the Interim Supply Agreement between Grupo Modelo, S.A.B. de C.V. and Crown Imports LLC, dated [_____], 2013 (the "Agreement"). The undersigned, _____, does hereby certify that he is the duly elected and presently incumbent _____ of Crown Imports LLC, and that as such he is familiar with the facts herein certified and is duly authorized to execute the certificate on behalf of Crown Imports LLC, and does hereby further certify that:

1. Pursuant to Section 4.2 and Section 4.3 of the Agreement, Shipment No. _____ of Product, which was determined to be unsaleable on _____ by _____, was destroyed on _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate this ____ day of _____, _____.

_____
Name:
Title:

EXHIBIT B

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

EXHIBIT B-1
EXAMPLE OF QUARTERLY FOREIGN FREIGHT ADJUSTMENT

[REDACTED]*

* Confidential Information redacted pursuant to the Stipulated Protective Order.

EXHIBIT B

Aeromodelo, S.A. de C.V.
Bodegas Alprosa, S.A. de C.V.
Club de Base Ball Obregon, S.A. de C.V.
Comercio y Distribución Modelo, S. de R.L. en C.V.
Compañía Cervecera de Colima, S. A. de C.V.
Desarrollo Inmobiliario Siglo XXI, S.A.de C.V.
Espectáculos Costa del Pacifico, S.A. de C.V.
Extrade, S.A. de C.V.
Extraser,S.A. de C.V.
Industria del Campo, S.A. de C.V.
Inmobiliaria Exmod, S.A. de C.V.
Intregrow Malt, LLC
Promotora Deportiva y Cultural de la Laguna, S.A. de C.V.
Promotora Deportiva y Cultural de Zacatecas, S.A. de C.V.
Promotora e Inmobiliaria Cuyd, S.A. de C.V.
Rancho Cermo, S.A de C.V.
Santos Laguna, S.A. de C.V.
Seguridad Privada Modelo, S. A. de C. V.
Servicios de Personal Modelo, S.A. de C.V.
Territorio Santos Modelo, S.A. de C.V.
Tiendas Extra, S.A. de C.V.

GRUPO MODELO, S.A.B. DE C.V.

April 17, 2013

U.S. v. Anheuser-Busch InBev SA/NV, et al., No. 13-00127-RWR

Dear Mary:

At the request of the Antitrust Division of the United States Department of Justice, Grupo Modelo, S.A.B. de C.V. ("Grupo Modelo"), in connection with the above-captioned action, hereby represents as follows:

- **Future Expansion.** Grupo Modelo is not aware at this time of any material impediment (physical, legal, regulatory or otherwise) to the expansion of the Piedras Negras plant to operate at a nominal capacity of thirty million (30,000,000) hectoliters of beer per annum (assuming that sufficient capital expenditures shall have been made and necessary permits shall have been sought).

- **Proprietary Inputs.** With the exception of yeast and recipes, there are no proprietary inputs required to operate the Piedras Negras plant.

- **Sufficiency.** Grupo Modelo is not aware at this time of any additional assets beyond the Divestiture Assets (as that term is defined in the proposed Final Judgment) that would need to be transferred to Constellation Brands, Inc. ("Constellation") in order to operate the Piedras Negras plant.

  The Divestiture Assets include all of the assets, properties and rights owned by Grupo Modelo that Constellation would need to obtain from Grupo Modelo in order to import, distribute, market and sell the Modelo Beer Brands (as that term is defined in the proposed Final Judgment) in the U.S. through Crown Imports LLC. This representation will be effective until the Monitoring Trustee's services shall have been terminated pursuant to Section IIX.I. of the proposed Final Judgment.

JAVIER BARROS SIERRA NO. 555 * PISO 6 * COLONIA SANTA FÉ. * 01210 MÉXICO, D. F
TEL.: 22-66-00-00 FAX: 22-66-42-92 Y 22-66-00-00 www.gmodelo.com.mx

- **Employees.** At this time, all employees who spend substantially all of their time working at the Piedras Negras plant are employed by Servicios Modelo de Coahuila, S.A. de C.V., except for the employees of independent contractors who perform job functions not directly related to the production of beer at the Piedras Negras plant, including but not limited to gardening, cleaning and medical services.

Sincerely,

GRUPO MODELO, S.A.B. DE C.V.

By: _____
Name: Carlos Fernandez
Title: CEO

Mary Strimel, Esq.
U.S. Department of Justice
Networks and Technology Enforcement Division
450 Fifth Street, N.W., Suite 7100
Washington, D.C. 20530

Exhibit D
[REDACTED]

[FR Doc. 2013–11832 Filed 5–21–13; 8:45 am]
BILLING CODE 4410–11–P

FEDERAL REGISTER

Vol. 78 Wednesday,
No. 99 May 22, 2013

Part III

Bureau of Consumer Financial Protection

12 CFR Part 1005
Electronic Fund Transfers (Regulation E); Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2012–0050]

RIN 3170–AA33

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending its regulation which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation. This final rule (the 2013 Final Rule) modifies the final rules issued by the Bureau in February, July, and August 2012 (collectively the 2012 Final Rule) that implement section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding remittance transfers. The amendments address three specific issues. First, the 2013 Final Rule modifies the 2012 Final Rule to make optional, in certain circumstances, the requirement to disclose fees imposed by a designated recipient's institution. Second and relatedly, the 2013 Final Rule also makes optional the requirement to disclose taxes collected by a person other than the remittance transfer provider. In place of these two former requirements, the 2013 Final Rule requires disclaimers to be added to the rule's disclosures indicating that the recipient may receive less than the disclosed total due to the fees and taxes for which disclosure is now optional. Finally, the 2013 Final Rule revises the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information, and, in particular, when a sender provides an incorrect account number or recipient institution identifier that results in the transferred funds being deposited in the wrong account.

DATES: This rule is effective October 28, 2013. The effective date of the rules published February 7, 2012 (77 FR 6194), July 10, 2012 (77 FR 40459), and August 20, 2012 (77 FR 50244), which were delayed on January 29, 2013 (78 FR 6025), is October 28, 2013.

FOR FURTHER INFORMATION CONTACT: Eric Goldberg, Ebunoluwa Taiwo or Lauren Weldon, Counsels; Division of Research, Markets & Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700 or *CFPB_RemittanceRule@consumerfinance.gov.* Please also visit the following Web site for additional information: *http://www.consumerfinance.gov/regulations/final-remittance-rule-amendment-regulation-e/.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

This final rule (the 2013 Final Rule) revises the amendments to Regulation E published on February 7, 2012 (77 FR 6194) (February Final Rule) [1] and August 20, 2012 (77 FR 50244) (August Final Rule and collectively with the February Final Rule, the 2012 Final Rule). The 2012 Final Rule, summarized below, implements section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which creates a comprehensive new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries.

The 2013 Final Rule amends the 2012 Final Rule by addressing three specific issues. First, the 2013 Final Rule modifies the 2012 Final Rule to make optional, in certain circumstances, the requirement to disclose fees imposed by a designated recipient's institution for transfers to the designated recipient's account. Second and relatedly, the 2013 Final Rule also makes optional the requirement to disclose taxes collected by a person other than the remittance transfer provider. In place of these two former requirements, the 2013 Final Rule requires providers to include disclaimers on the disclosure forms provided to senders of remittance transfers indicating that the recipient may receive less than the disclosed total due to certain recipient institution fees and taxes collected by a person other than the provider. In addition, the 2013 Final Rule permits providers to disclose these fees and taxes, or a reasonable estimate of these figures, as part of the new required disclaimer.

The 2013 Final Rule also creates an exception from the 2012 Final Rule's error provisions for certain situations in which a sender provides an incorrect account number or recipient institution identifier and that mistake results in the transfer being deposited in the account of someone other than the designated recipient. For this exception to apply, a remittance transfer provider must satisfy a number of conditions including providing notice to the sender prior to the transfer that the transfer amount could be lost, implementing reasonable verification measures to verify the accuracy of a recipient institution identifier, and making reasonable efforts to retrieve the mis-deposited funds. The 2013 Final Rule also streamlines error resolution procedures in other situations where a sender's provision of incorrect or incomplete information results in an error under the rule.

Finally, the 2013 Final Rule will go into effect on October 28, 2013.

II. Background

A. Section 1073 of the Dodd-Frank Act

Section 1073 of the Dodd-Frank Act amended the Electronic Fund Transfer Act (EFTA) to create a new comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. For covered transactions sent by remittance transfer providers, section 1073 creates a new EFTA section 919, and generally requires: (i) The provision of disclosures prior to and at the time of payment by the sender for the transfer; (ii) cancellation and refund rights; (iii) the investigation and remedy of errors by providers; and (iv) liability standards for providers for the acts of their agents.

B. Types of Remittance Transfers

As discussed in more detail in the February Final Rule, consumers can choose among several methods of transferring money to foreign countries. The various methods of remittance transfers can generally be categorized as involving either closed network or open network systems, although hybrids between open and closed networks also exist. Consistent with EFTA section 919, the 2013 Final Rule generally applies to all remittance transfer providers, whether transfers are sent through closed network or open network systems, or some hybrid of the two.

Closed Networks and Money Transmitters

In a closed network, a principal provider offers a service entirely through its own operations, or through a network of agents or other partners that help collect funds in the United States and disburse them abroad. Through the provider's own contractual arrangements with those agents or other partners, or through the contractual relationships owned by the provider's business partner, the principal provider can exercise some control over the

[1] The Bureau published a technical correction to the February Final Rule on July 10, 2012. 77 FR 40459. For simplicity, that technical correction is incorporated into the term ''February Final Rule.''

transfer from end-to-end, including over fees and other terms of service.

In general, closed networks can be used to send transfers that can be received in a variety of forms. But, they are most frequently used to send transfers that are not received in accounts held by depository institutions and credit unions. Additionally, closed networks are most frequently used by non-depository institutions called money transmitters, though depository institutions and credit unions may also provide (or operate as part of) closed networks. Similarly, the Bureau believes that many money transmitters operate exclusively or primarily through closed network systems.

Open Networks and Wire Transfers

In an open network, no single provider has control over or relationships with all of the participants that may collect funds in the United States or disburse funds abroad. Funds may pass from sending institutions through intermediary institutions to recipient institutions, any of which may deduct fees from the principal amount or set the exchange rate that applies to the transfer, depending on the circumstances. Institutions involved in open network transfers may learn about each other's practices regarding fees or other matters through any direct contractual or other relationships that do exist, through experience in sending wire transfers over time, through reference materials, or through information provided by the consumer. However, at least until the time of the February Final Rule, in open networks, there has not generally been a uniform global method for or practice of communication by all intermediary and recipient institutions with originating entities regarding the fees and exchange rates that intermediary or recipient institutions might apply to transfers.

Unlike closed networks, open networks are typically used to send funds to accounts at depository institutions or credit unions. Though they may be used by money transmitters, open networks are primarily used by depository institutions, credit unions and broker-dealers for sending money abroad. The most common form of open network remittance transfer is a wire transfer, a certain type of electronically transmitted order that directs a receiving institution to pay an identified beneficiary. Unlike closed network transactions, which generally can only be sent to agents or other entities that have signed on to work with the specific provider in question, wire transfers can reach most banks (or other institutions) worldwide through national payment systems that are connected through correspondent and other intermediary bank relationships.

Information on the volume of remittance transfers sent via certain methods is very limited. However, the Bureau believes that closed network transactions by money transmitters and wire transfers sent by depository institutions and credit unions make up the great majority of the remittance transfer market. Furthermore, the Bureau believes that, collectively, money transmitters send far more remittance transfers each year than depository institutions and credit unions combined.

III. Summary of the Rulemaking Process

The Bureau published three rules in 2012 to implement section 1073 of the Dodd-Frank Act. The Bureau then published a proposal on December 31, 2012, which would have modified those published rules in three distinct areas. 77 FR 77188 (the December Proposal). These three final rules and the December Proposal are summarized below.

A. The 2012 Final Rule

On May 31, 2011, the Board of Governors for the Federal Reserve System (Board) first proposed to amend Regulation E to implement the remittance transfer provisions in section 1073 of the Dodd-Frank Act. *See* 76 FR 29902 (May 23, 2011). Authority to implement the new Dodd-Frank Act provisions amending the EFTA transferred from the Board to the Bureau on July 21, 2011. *See* 12 U.S.C. 5581(a)(1); 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include the EFTA). On February 7, 2012, the Bureau finalized the Board's proposal in the February Final Rule. On August 20, 2012, the Bureau published the August Final Rule adopting a safe harbor for determining which persons are not remittance transfer providers subject to the February Final Rule because they do not provide remittance transfers in the normal course of business, and modifying several aspects of the February Final Rule regarding remittance transfers that are scheduled before the date of transfer. The 2012 Final Rule had an effective date of February 7, 2013.[2]

The 2012 Final Rule adopts provisions that govern certain electronic transfers of funds sent by consumers in the United States to designated recipients in other countries and, for covered transactions, imposes a number of requirements on remittance transfer providers. In particular, the 2012 Final Rule implements disclosure requirements in EFTA sections 919(a)(2)(A) and (B). The 2012 Final Rule includes provisions that generally require a provider to provide to a sender a written pre-payment disclosure containing detailed information about the transfer requested by the sender, specifically including the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. In addition to the pre-payment disclosure, pursuant to the 2012 Final Rule, the provider also must furnish to a sender a written receipt when payment is made for the transfer. The receipt must include the information provided on the pre-payment disclosure, as well as additional information such as the date of availability of the funds, the designated recipient's contact information, and information regarding the sender's error resolution and cancellation rights.

Though the 2012 Final Rule's provisions permit remittance transfer providers to provide estimates in three specific circumstances, the 2012 Final Rule generally requires that disclosures state the actual exchange rate that will apply to a remittance transfer and the actual amount that will be received by the designated recipient of a remittance transfer. One of the exceptions permitting estimates includes a temporary exception for certain transfers provided by insured institutions. Pursuant to this exception, if the remittance transfer provider is an insured depository institution or credit union, the transfer is sent from the sender's account with the institution, and the provider cannot determine exact amounts for reasons beyond its control, the provider can estimate the exchange rate, any fees imposed on the remittance transfer by a person other than the provider, and, in more limited circumstances, taxes imposed by a person other than the provider. The 2012 Final Rule also includes two permanent exceptions permitting estimates, one for transfers to certain countries and the other for transfers that are scheduled five or more business days before the date of transfer.

As noted above, the EFTA, as amended by the Dodd-Frank Act, requires the disclosure of the amount to be received by the designated recipient. Because fees imposed and taxes collected on a remittance transfer by persons other than the remittance

[2] On January 29, 2013, the Bureau temporarily delayed the February 7, 2013 effective date (Temporary Delay Rule).

transfer provider can affect the amount received by the designated recipient, the 2012 Final Rule's provisions require that providers take such fees and taxes into account when calculating the disclosure of the amount to be received under § 1005.31(b)(1)(vii), and that such fees and taxes be disclosed under § 1005.31(b)(1)(vi). Comment 31(b)(1)–ii to the 2012 Final Rule explains that a provider must disclose any fees and taxes imposed on the remittance transfer by a person other than the provider that specifically relate to the remittance transfer, including fees charged by a recipient institution or agent. Foreign taxes that must be disclosed include regional, provincial, state, or other local taxes, as well as taxes imposed by a country's central government.

In the February Final Rule in response to comments received on the Board's proposal, the Bureau noted that commenters had argued that fees imposed and taxes collected on the remittance transfer by a person other than the remittance transfer provider may not be known at the time the sender authorizes the remittance transfer and that this lack of knowledge could result in the provider disclosing misleading information to the sender. The Bureau also acknowledged that smaller institutions might not have the resources to obtain or monitor information about foreign tax laws or fees charged by unrelated financial institutions and that providers might not know whether a recipient had agreed to pay such fees or how much the recipient may have agreed to pay. Nevertheless, the Bureau stated that the Dodd-Frank Act specifically requires providers to disclose the amount to be received, and that fees imposed and taxes collected on the remittance transfer by a person other than the provider are a necessary component of this amount. The Bureau further stated that it was necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to adopt § 1005.31(b)(1)(vi) to require the itemized disclosure of fees and taxes imposed on the remittance transfer by persons other than the provider to help senders understand the calculation of the amount received, which would aid comparison shopping and the identification of errors, and thus effectuate the purposes of the EFTA.

The 2012 Final Rule also implements EFTA sections 919(d) and (f), which direct the Bureau to promulgate error resolution standards and rules regarding appropriate cancellation and refund policies, as well as standards of liability for remittance transfer providers. The 2012 Final Rule thus defines in § 1005.33 what constitutes an error with respect to a remittance transfer, as well as what remedies are available when an error occurs. Of relevance to the 2013 Final Rule, the 2012 Final Rule provides in §§ 1005.33(a)(1)(iii) and (a)(1)(iv) that, subject to specified exceptions, an error includes the failure to make available to a designated recipient the amount of currency stated in the disclosure provided to the sender, as well as the failure to make funds available to a designated recipient by the date of availability stated in the disclosure. Where the error is the result of the sender providing insufficient or incorrect information, § 1005.33(c)(2)(ii) in the 2012 Final Rule specifies the available remedies: The provider must either refund the funds provided by the sender in connection with the remittance transfer (or the amount appropriate to correct the error) or resend the transfer at no cost to the sender, except that the provider may collect third-party fees imposed for resending the transfer. If the transfer is resent, comment 33(c)–2 to the 2012 Final Rule explains that a request to resend is a request for a remittance transfer, and thus the provider must provide the disclosures required by § 1005.31. Under § 1005.33(c)(2) of the 2012 Final Rule, even if the provider cannot retrieve the funds once they are sent, the provider still must provide the stated remedies if an error occurred.

B. The December Proposal

In the February Final Rule, the Bureau stated that it would continue to monitor implementation of the new statutory and regulatory requirements. The Bureau subsequently engaged in dialogue with both industry and consumer groups regarding implementation efforts and compliance concerns. Most frequently, industry participants expressed concern about the costs and compliance challenges to remittance transfer providers of: (1) The requirement to disclose certain fees imposed by recipient institutions on remittance transfers; (2) the requirement to disclose taxes imposed by a person other than the provider, including taxes charged by foreign regional, provincial, state, or other local governments; and (3) the requirement to treat as an error, and thus resend or refund a remittance transfer, where the failure to deliver a transfer to the designated recipient occurs because the sender provided an incorrect account number to the provider. As a result, the Bureau proposed to refine these specific aspects of the 2012 Final Rule in the December Proposal.

First, the Bureau proposed to exercise its exception authority under section 904(c) of the EFTA to provide additional flexibility on how foreign taxes and recipient institution fees may be disclosed. If a remittance transfer provider did not have specific knowledge regarding variables that affect the amount of foreign taxes imposed on the transfer, the December Proposal would have permitted a provider to rely on a sender's representations regarding these variables, as permitted under the 2012 Final Rule. However, the December Proposal would have also permitted providers to estimate foreign taxes by disclosing the highest possible such tax that could be imposed with respect to any unknown variable. Similarly, if a provider did not have specific knowledge regarding variables that affect the amount of fees imposed on the remittance transfer by a recipient institution for receiving a remittance transfer in an account, the December Proposal would have permitted a provider to rely on a sender's representations regarding these variables. Separately, the December Proposal would have also permitted the provider to estimate a fee imposed on the remittance transfer by a recipient institution for receiving a transfer into an account by disclosing the highest possible fee with respect to any unknown variable, as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution. If the provider could not obtain such fee schedules or information from prior transfers, the December Proposal would have allowed a provider to rely on other reasonable sources of information.

Second, the Bureau proposed to exercise its exception authority under section 904(c) of the EFTA to eliminate the requirement to disclose foreign taxes at the regional, state, provincial and local level. Thus, under the December Proposal, a remittance transfer provider's obligation to disclose foreign taxes would have been limited to taxes imposed on the remittance transfer by a foreign country's central government. Because the proposed changes regarding recipient institution fees and taxes, taken together, could have resulted in inexact disclosures, the December Proposal also solicited comment on whether the existing requirement in the 2012 Final Rule to state that a disclosure is ''Estimated'' when estimates are provided under § 1005.32 should be extended to scenarios where disclosures

are not exact due to the proposed revisions.

Third, the December Proposal would have revised the error resolution provisions that apply when a sender provides incorrect or insufficient information to the remittance transfer provider, and, in particular, when a remittance transfer is not delivered to a designated recipient because the sender provided an incorrect account number to the provider and the incorrect account number results in the funds being deposited in the wrong account. Under the December Proposal, in these circumstances, where the provider could demonstrate that the sender provided the incorrect account number and the sender had notice that the sender could lose the transfer amount, the provider would not have been required to return or refund mis-deposited funds that could not be recovered, provided that the provider had made reasonable efforts to attempt to recover the funds.

The December Proposal also would have revised the existing remedy procedures in situations where a sender provided incorrect or insufficient information, other than an incorrect account number, to allow remittance transfer providers additional flexibility when resending funds at a new exchange rate. Under proposed § 1005.33(c)(3), providers would have been able to provide oral, streamlined disclosures and would not have been required to treat resends as entirely new remittance transfers. The Bureau also proposed to make conforming revisions in light of the proposed revisions regarding recipient institution fees and foreign taxes.

Finally, the Bureau proposed to temporarily delay the effective date of the final rule and to extend the final rule's effective date until 90 days after this final rule is published.[3]

C. Overview of Comments and Outreach

The Bureau received more than 100 comments on the December Proposal. The majority of comments were submitted by industry commenters, including depository institutions and money transmitters that provide remittance transfers, and industry trade associations. In addition, the Bureau received comment letters from consumer groups and several individuals.[4]

Most industry commenters supported, or did not oppose, the proposed additional flexibility regarding the disclosure of recipient institution fees. However, many of these commenters further urged the Bureau to eliminate altogether the requirement that remittance transfer providers disclose recipient institution fees for remittance transfers to an account. These commenters largely reemphasized and expanded upon arguments that commenters had asserted prior to the publication of the February Final Rule. Primarily, that for remittance transfers sent through open networks it is very difficult, and in some cases impossible, for providers to know or even to estimate—with any degree of accuracy—the fees imposed on remittance transfers by recipient institutions. Commenters also argued that for wire transfers sent over the open network, the number of recipient institutions that might receive transfers, and thus assess fees, posed a challenge for any one U.S. institution, even a large correspondent bank, attempting to learn and accurately disclose these fees. Relatedly, commenters noted that existing systems for sending wire transfers in open networks generally do not provide a sending institution any insight into the fees charged by the recipient institution. Some of these commenters contended that Congress did not intend to require the disclosure of recipient institution fees.

In addition, industry commenters argued that the fees charged by recipient institutions for remittance transfers to an account are already transparent to the recipient (because the recipient typically has a preexisting relationship with the recipient institution), do not add transparency that benefits senders in any meaningful way, and may result in overpayment by the sender (particularly to the extent that the December Proposal permits estimates of the highest possible fee). These commenters also expressed concern that the additional flexibility proposed by the Bureau would not substantially reduce the burdens of compliance with the fee disclosure provisions because it would be difficult for remittance transfer providers to locate the materials needed—such as data from prior transactions, fee schedules, or industry surveys—to provide estimates of recipient institution fees under the proposed provisions. Relatedly, many industry commenters argued that the effort needed to compile this information would be of relatively little value to senders of remittance transfers when contrasted with the increased cost of providing the disclosures.

Consumer groups expressed differing views regarding the Bureau's proposal with respect to the disclosure of recipient institution fees. Some argued that senders of remittance transfers would be better served by disclosures that inform them only that recipient institutions may charge fees rather than with disclosures containing estimates of the fees. Others argued that Congress had intended for remittance transfer providers to arrange with recipient institutions to secure the information necessary to disclosure the relevant fee information and therefore maintained that the Bureau should make the proposed estimation provisions temporary in nature to allow and encourage providers to develop databases containing information that would eventually permit accurate disclosures of all fees imposed on remittance transfers, including recipient institutions fees.

Comments received regarding the proposed adjustments to the disclosure of foreign taxes generally mirrored the comments received regarding recipient institution fees. Again, while industry commenters generally stated that they appreciated the Bureau's proposal to eliminate the requirement to disclose subnational taxes as well as increase remittance transfer providers' flexibility to estimate other applicable foreign taxes, most industry commenters also urged the Bureau to eliminate altogether the requirement to disclose taxes collected by a person other than the provider. Consumer groups expressed differing views as to whether the Bureau should adopt the proposed revisions. Based on the perceived difficulty of knowing foreign taxes, some consumer group commenters supported the proposed flexibility with respect to the disclosure of foreign taxes in general and the elimination of the requirement to disclose subnational taxes in particular and they also emphasized the difficulty of providing tax disclosures. Others commenters urged that the Bureau should maintain the requirement that providers disclose all taxes imposed on a remittance transfer by a person other than the provider because doing so is the only way for senders to know precisely the amount that designated recipients will receive.

With respect to the Bureau's proposal to create an exception to the definition of error in the 2012 Final Rule, industry commenters uniformly supported the proposed change. Commenters repeated much of the reasoning put forth by the Bureau in the December Proposal—that

[3] As noted above, the Bureau published the Temporary Delay Rule on January 29, 2013, which temporarily delayed the February 7, 2013 effective date of the 2012 Final Rule.

[4] Comments that solely addressed whether the Bureau should have delayed the February 7, 2013 effective date were addressed in the Temporary Delay Rule and are not separately addressed herein.

in many instances remittance transfer providers are unable to verify the accuracy of account numbers and that providers should not have to bear the cost of a lost transfer. Commenters reiterated the fear that unscrupulous senders would abuse the 2012 Final Rule's remedy provisions for their own benefit, and that the attendant risk of loss could be significant enough that many providers might either exit the remittance transfer business or severely curtail their offerings. In addition, many industry commenters requested that the Bureau expand the proposed exception to the definition of the term error to include all mistakes in information provided by senders that could lead to an error under the rule, rather than just incorrect account numbers.

Consumer group commenters were divided on whether the Bureau should adopt the proposed exception to the definition of error. Two consumer groups argued that the proposed exception would properly calibrate the incentives for remittance transfer providers to prevent errors. These groups also agreed that remittance transfer providers should not have to bear the loss of a missing transfer when funds cannot be retrieved due to an error by the sender. Other consumer group commenters urged the Bureau not to adopt the proposed changes to the definition of the term error on the grounds that they are unnecessary because of existing error resolution procedures in subpart A of Regulation E, harmful to consumers who can ill afford to bear the loss of a missing transfer, and contrary to the intent of Congress.

In addition to the comments received on the December Proposal, the Bureau staff conducted outreach with various parties about the issues raised by the December Proposal or raised in comments. Records of these outreach conversations are reflected in *ex parte* submissions included in the rulemaking record (accessible by searching by the docket number associated with this final rule at *www.regulations.gov*).

IV. Legal Authority

Section 1073 of the Dodd-Frank Act created a new section 919 of the EFTA that requires remittance transfer providers to provide disclosures to senders of remittance transfers, pursuant to rules prescribed by the Bureau. In particular, providers must give a sender a written pre-payment disclosure containing specified information applicable to the sender's remittance transfer, including the amount to be received by the designated recipient. The provider must also provide to the sender a written receipt that includes the information provided on the pre-payment disclosure, as well as additional specified information. EFTA section 919(a).

In addition, EFTA section 919(d) provides for specific error resolution procedures and directs the Bureau to promulgate rules regarding appropriate cancellation and refund policies. Except as described below, the final rule is issued under the authority provided to the Bureau in EFTA section 919, and as more specifically described in this **SUPPLEMENTARY INFORMATION**.

In addition to the Dodd-Frank Act's statutory mandates, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems'' and to provide ''individual consumer rights.'' EFTA section 902(b). EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance. As described in more detail below, certain provisions of the 2013 Final Rule are adopted pursuant to the Bureau's authority under EFTA sections 904 (a) and (c).

V. Section-by-Section Analysis of the Final Rule

Section 1005.30 Remittance Transfer Definitions

Section 1005.30 incorporates certain definitions applicable to the remittance transfer provisions in subpart B of Regulation E. Under the 2012 Final Rule, the introductory language in § 1005.30 states that ''for purposes of this subpart, the following definitions apply.'' The Bureau is revising in the 2013 Final Rule this introductory language to clarify that, except as otherwise provided, for purposes of subpart B of Regulation E, the definitions in § 1005.30 apply.

30(c) Designated Recipient

Under the 2012 Final Rule, the term ''designated recipient'' is defined to mean any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country. Section 1005.30(c). Comment 30(c)–1 further clarifies that a designated recipient can be either a natural person or an organization, such as a corporation. *See* § 1005.2(j) (definition of person). Relatedly, § 1005.31(b)(2)(iii) requires a remittance transfer provider to disclose to a sender the name of the designated recipient. Thus, the provider must ascertain this name from the sender at or before the receipt or combined disclosure is provided to the sender.

As discussed below in the section-by-section analysis of § 1005.33(a)(1)(iv), the Bureau is adopting certain revisions to 2012 Final Rule's error resolution provisions in § 1005.33 where a transfer is delivered to someone other than the designated recipient. In particular, § 1005.33(a)(1)(iv)(D) creates a new exception to the definition of error in § 1005.33(a)(1)(iv) that applies when a sender provides an incorrect account number or recipient institution identifier, and the conditions in § 1005.33(h) are met. Based on comments received regarding these proposed changes, and, in particular, concerning the specific mistakes by a sender that might result in an error under the 2012 Final Rule, the Bureau believes that it would be useful to provide further clarity on how the designated recipient is determined for purposes of determining whether an error has occurred or the new exception under § 1005.33(a)(1)(iv) applies. In particular, the Bureau believes it necessary to address situations in which the transfer is delivered to someone other than the designated recipient named by the sender at the time of the transfer. Therefore, the Bureau is clarifying in comment 30(c)–1 that the designated recipient is identified by the name of the person stated on the disclosure provided pursuant to § 1005.31(b)(1)(iii).

30(h) Third-Party Fees

As discussed in detail below in the section-by-section analysis of § 1005.31, the Bureau is eliminating the requirement to disclose certain recipient institution fees and to include such fees in the calculation of the disclosed amount to be received by the designated recipient. In order to differentiate between fees that must be disclosed and included in the calculation of the amount to be received and those that are no longer required to be disclosed and included in such calculation, the Bureau is adopting definitions under § 1005.30(h) for covered third-party fees, required to be calculated and disclosed under subpart B of Regulation E, and non-covered third-party fees, which are not required to be calculated and

disclosed. Section 1005.30(h)(1) defines the term ''covered third-party fees'' to mean any fee that is imposed on the remittance transfer by a person other than the remittance transfer provider, except for non-covered third-party fees as described in § 1005.30(h)(2). Section 1005.30(h)(2) defines the term ''non-covered third-party fees'' to mean any fees imposed by the designated recipient's institution for receiving a transfer into an account, except if the institution acts as an agent of the remittance transfer provider. The rationale underlying the distinctions made in these definitions is discussed further below in the discussion of § 1005.31(b)(1)(vi).

The 2013 Final Rule adds new commentary to 30(h) to explain the scope of these fees. Drawing from applicable examples of fees imposed by a person other than the remittance transfer provider that were in comment 31(b)(1)–1.ii in the 2012 Final Rule, as well as proposed comments 31(b)(1)–iii and –iv which would have provided additional clarification on how to disclose recipient institution fees, comment 30(h)–1 explains that fees imposed on the remittance transfer by a person other than the provider include only those fees that are charged to the designated recipient and are specifically related to the remittance transfer.

Comment 30(h)–1 additionally provides examples of fees that are or are not specifically related to the remittance transfer. For example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt are not fees imposed on the remittance transfer because these charges are not specifically related to the remittance transfer. Comment 30(h)–1 further states that account fees are also not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Comment 30(h)–1 additionally clarifies that fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount that will be received by the designated recipient are not fees imposed on the remittance transfer. Comment 30(h)–1 also clarifies that fees that specifically relate to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself.

In addition, the 2013 Final Rule adds new commentary to explain the difference between covered and non-covered third-party fees. Comment 30(h)–2.i explains that under § 1005.30(h)(1), a covered third-party fee means any fee that is imposed on the remittance transfer by a person other than the remittance transfer provider including fees imposed by a designated recipient's institution for receiving a transfer into an account where such institution acts as an agent of the provider for the remittance transfer. As noted above, the rationale for this distinction is discussed further below in the section-by-section analysis of § 1005.31(b)(1)(vi). Comment 30(h)–2.ii provides examples of covered third-party fees including fees imposed on a remittance transfer by intermediary institutions in connection with a wire transfer and fees imposed on a remittance transfer by an agent of the provider at pick-up for receiving the transfer.

With respect to non-covered third-party fees, comment 30(h)–3 explains that a non-covered third-party fee means any fee imposed by the designated recipient's institution for receiving a transfer into an account, unless the institution is acting as an agent of the remittance transfer provider. It further provides as an example that a fee imposed by the designated recipient's institution for receiving an incoming transfer could be a non-covered third-party fee provided such institution is not acting as the agent of the provider. In addition, comment 30(h)–3 explains that designated recipient's account in § 1005.30(h)(2) refers only to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. It does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution. The rationale for this interpretation is also discussed further below in the section-by-section analysis of § 1005.31(b)(1)(vi).

Section 1005.31 Disclosures

EFTA sections 919(a)(2)(A) and (B) require a remittance transfer provider to disclose, among other things, the amount to be received by the designated recipient in the currency in which it will be received. In the 2012 Final Rule under § 1005.31, the Bureau set forth the disclosure requirements for providers, including that providers disclose fees and taxes imposed by a person other than the provider. Pursuant to EFTA section 919(a)(4)(A), the Bureau adopted an exception in § 1005.32(a) to provide that for certain disclosures by insured depository institutions or credit unions regarding the amount of currency that will be received by the designated recipient will be deemed to be accurate in certain circumstances so long as the disclosure provides a reasonably accurate estimate of the amount of currency to be received.

As noted in the December Proposal, after the Bureau issued the February Final Rule, industry participants continued to express concerns previously raised in response to the Board's proposed rule to implement EFTA section 919. The concerns regarded the feasibility of disclosing fees imposed by a designated recipient's institution.

For the subset of transfers sent over the open network, industry participants stated that where a designated recipient's institution charges that recipient fees for receiving a transfer into an account, the remittance transfer provider would not typically know whether the recipient had agreed to pay such fees or how much the recipient had agreed to pay. Some industry participants also requested guidance on whether and how to disclose recipient institution fees that can vary based on the recipient's status with the institution, quantity of transfers received, or other variables that are not easily knowable by the sender or the provider.

Separately, after the release of the February 2012 Rule, industry expressed concern about the disclosure of foreign taxes. Industry participants argued first that it is significantly more burdensome to research and disclose subnational taxes, *i.e.,* taxes imposed by regional, provincial, state, and other local governments than it is to research and disclose those taxes imposed by a country's central government because there are substantially more jurisdictions that could impose these subnational taxes. Second, industry participants suggested that the guidance in the 2012 Final Rule under comment 31(b)(1)(vi)–2, which would allow remittance transfer providers to rely on senders' representations regarding variables that affect the amount of taxes imposed by a person other than the provider is insufficient where variables that influence the amount of taxes imposed by a person other than the provider are not easily knowable by the sender or the provider.

With respect to both recipient institution fees and foreign taxes, industry stated that, to make the appropriate calculations and disclosures, remittance transfer

providers might need to ask numerous questions of senders that senders might not understand or might not be able to answer. With respect to fees, industry also stated that the calculations required to determine and disclose fees might vary with respect to each recipient institution because each of these institutions might have unique fee schedules that applied to particular accounts or different ways of imposing fees on remittance transfers.

In response to these comments, in the December Proposal, the Bureau proposed to provide additional flexibility and guidance regarding the calculation and disclosure of fees imposed by a designated recipient's institution for receiving a transfer into an account and taxes imposed by a person other than the remittance transfer provider. The Bureau also proposed to eliminate the requirement to disclose regional, provincial, state, and other local foreign taxes and to include this amount in the disclosed amount received by the designated recipient. The Bureau sought comment on whether these proposed changes achieved the goals stated in the December Proposal, or whether the existing rules or another alternative were preferable.

The majority of comments on the proposed changes regarding recipient institution fee and tax disclosures came from industry participants, including large banks, community banks, credit unions, non-depository institutions, and trade associations. These commenters stated that they appreciated the Bureau's attempts to facilitate compliance, particularly with respect to the proposal to eliminate the required disclosure of subnational taxes. However, many industry commenters argued that the proposed changes did not go far enough to ease compliance burden. These industry commenters asserted that the proposed flexibility would not effectively mitigate the difficulty of researching the information needed to provide the recipient institution fee and foreign tax disclosures to senders. Further, these industry commenters also expressed concern that the proposed estimation methods could increase consumer confusion due to discrepancies in the estimated amounts disclosed. Moreover, industry commenters expressed concern that, under the estimation methods described in the December Proposal, the sender would usually receive a disclosure that showed the highest possible fee or tax that could apply. As a result of this proposed highest estimation method, commenters stated that the disclosure could result in senders increasing the amount of money transferred more than was necessary to insure that a recipient received the expected amount.

Some consumer groups also expressed skepticism about the proposed estimation methods for a different reason: they believed that any additional estimation, beyond that permitted in the 2012 Final Rule, would be detrimental to senders because they would not know the precise amount of the transfer that would be received. In contrast, other consumer groups supported the December Proposal and stated that it struck the proper balance of facilitating compliance, while also providing meaningful information to senders.

The Bureau has carefully weighed these concerns and, for the reasons explained in detail below, the Bureau believes that it is appropriate to exercise its exception authority under EFTA section 904(c) to eliminate the requirement to include certain recipient institution fees and taxes collected by a person other than the remittance transfer provider in the calculation of the amount to be received by the designated recipient pursuant to § 1005.31(b)(1)(vii). For the same reasons, the Bureau is eliminating the requirement to disclose these amounts under § 1005.31(b)(1)(vi). However, as noted above, the Bureau believes that a majority of remittance transfers are sent through closed networks whereby the recipient picks up the transfer from an agent. In these cases, all fees imposed on the remittance transfer would continue to be required to be disclosed. *See* § 1005.30(h)(1).

For those minority of transfers where there may be non-covered third-party fees, the 2013 Final Rule requires that remittance transfer providers include, as applicable, a disclaimer on the pre-payment disclosure and receipt, or combined disclosure, indicating that the recipient may receive less due to fees charged by the recipient's bank. *See* § 1005.31(b)(1)(viii). Similarly, if there may be taxes collected on the remittance transfer by a person other than the provider, the 2013 Final Rule requires that providers include a disclaimer indicating that the recipient may receive less due to foreign taxes. As part of these disclaimers, providers may choose to disclose an exact or estimated amount of these fees or taxes. *See* § 1005.32(b)(3).

As described in detail below, the 2013 Final Rule's Appendix and Model Forms have been amended to include samples of the new disclosures and disclaimers. The Bureau is also making conforming edits in several other provisions in § 1005.31 to reflect the changes in the required disclosures. These changes are described below.

31(a) General Form of Disclosures

31(a)(1) Clear and Conspicuous

In the 2013 Final Rule, § 1005.31(a)(1) provides that disclosures required by subpart B of Regulation E must be clear and conspicuous. It also states that disclosures required by this subpart may contain commonly accepted or readily understandable abbreviations or symbols.

As is explained in detail below, as part of the changes adopted in the 2013 Final Rule, the Bureau is adding two optional disclosures. First, the Bureau is making optional the requirement to disclose non-covered third-party fees and taxes collected on the remittance transfer by a person other than the remittance transfer provider. *See* § 1005.33(b)(1)(viii). Second, the Bureau is creating an exception to the definition of error for certain mistakes made by senders. *See* § 1005.33(a)(1)(iv)(D). If a provider wants to take advantage of this exception, it must provide a notice before the sender authorizes the remittance transfer consistent with § 1005.33(h)(3). While these two disclosures are optional, the Bureau believes it is important to ensure that they are made in a manner that is clear and conspicuous. Thus, the Bureau is amending § 1005.31(a)(1) to state that disclosures required by subpart B of Regulation E or permitted by § 1005.31(b)(1)(viii) or § 1005.33(h)(3) must be clear and conspicuous. Disclosures required by subpart B of Regulation E or permitted by § 1005.31(b)(1)(viii) or § 1005.33(h)(3) may contain commonly accepted or readily understandable abbreviations or symbols.

31(b) Disclosure Requirements

Comment 31(b)–1 Disclosures Provided as Applicable

Comment 31(b)–1 to the 2012 Final Rule provides examples of when certain disclosures may not be applicable and therefore need not be disclosed. Because of the changes that the Bureau is making with respect to the disclosure of non-covered third-party fees and taxes collected on a remittance transfer by a person other than the remittance transfer provider, the 2013 Final Rule makes certain revisions to the commentary in the 2012 Final Rule for consistency and clarification. Comment 31(b)–1 clarifies that for disclosures required by § 1005.31(b)(1)(i) through (vii), a provider may disclose a term and state that an amount or item is ''not

applicable,'' ''N/A,'' or ''None.'' Consistent with the changes made in the 2013 Final Rule regarding the disclosure of non-covered third-party fees and taxes collected on a remittance transfer by a person other than the provider, comment 31(b)–1 is revised to state that if fees are not imposed or taxes are not collected in connection with a particular transaction the provider need not provide the disclosures about fees and taxes generally required by § 1005.31(b)(1)(ii), the disclosures about covered third-party fees generally required by § 1005.31(b)(1)(vi), or the disclaimers about non-covered third-party fees and taxes collected on a remittance transfer by a person other than the provider generally required by § 1005.31(b)(1)(viii).

Comment 31(b)–2 Substantially Similar Terms, Language, and Notices

As adopted by the 2012 Final Rule, comment 31(b)–2 states that terms used on the disclosures under §§ 1005.31(b)(1) and (2) may be more specific than the terms provided and notes, as an example, that a remittance transfer provider sending funds to Colombia may describe a tax disclosed under § 1005.31(b)(1)(vi) as a ''Colombian Tax'' in lieu of describing it as ''Other Taxes.'' In light of the changes discussed below regarding the disclosure of foreign taxes, the 2013 Final Rule eliminates as an example the disclosure of a Colombian tax. Instead, the 2013 Final Rule provides as an example that a provider sending funds may describe fees imposed by an agent at pick-up as ''Pick-up Fees'' in lieu of describing them as ''Other Fees.'' In addition, in light of the new disclosures permitted by § 1005.31(b)(1)(viii) and § 1005.33(h)(3), the comment makes conforming changes to note that the foreign language disclosures required under § 1005.31(g) must contain accurate translations of the terms, language, and notices required by § 1005.31(b) or permitted by § 1005.31(b)(1)(viii) and § 1005.33(h)(3).

31(b)(1) Pre-Payment Disclosures

31(b)(1)(ii) Fees Imposed and Taxes Collected by the Provider

Section 1005.31(b)(1)(ii) of the 2012 Final Rule states that a remittance transfer provider must disclose any fees and taxes imposed on the remittance transfer by the provider, in the currency in which the remittance transfer is funded, using the terms ''Transfer Fees'' for fees and ''Transfer Taxes'' for taxes or substantially similar terms. Since the Board's initial proposal, commenters have argued that because a tax is imposed by a government, and not by the provider, this provision may be confusing. The Bureau agrees that the original formulation may be inexact insofar as taxes are typically imposed by governments, even though they may be collected by providers. As a result, for clarity, the Bureau is revising this language to refer to taxes ''collected'' by the provider. This change is for clarification only and is not intended to change the meaning of the provision in the 2012 Final Rule. Consequently, § 1005.31(b)(1)(ii) of the 2013 Final Rule is revised to state, more precisely, that a provider must disclose any fees imposed and any taxes collected on the remittance transfer by the provider.[5]

Comment 31(b)(1)–1 Fees and Taxes

Comment 31(b)(1)–1 to the 2012 Final Rule provides general guidance on the disclosure of fees and taxes. Comment 31(b)(1)–1.i explains that taxes imposed on the remittance transfer by the remittance transfer provider, which are required to be disclosed under § 1005.31(b)(1)(ii), include taxes imposed on the remittance transfer by a State or other governmental body, and comment 31(b)(1)–1.ii focuses more specifically on how to disclose fees and taxes imposed on the remittance transfer by a person other than the provider as required by § 1005.31(b)(1)(vi).

In the December Proposal, the Bureau proposed additional clarification on other types of recipient institution fees that are, or are not, specifically related to a remittance transfer. For organizational purposes, the December Proposal divided comment 31(b)(1)–1.ii into new proposed comment 31(b)(1)–1.ii through –1.v. Specifically, proposed comment 31(b)(1)–1.ii would have contrasted the fees and taxes required to be disclosed by § 1005.31(b)(1)(ii) and the fees and taxes required to be disclosed by § 1005.31(b)(1)(vi). Proposed comment 31(b)(1)–1.iii would have revised the reference to taxes imposed by a foreign government to taxes imposed by a foreign country's central government, and the proposed commentary would have built on the existing guidance regarding applicable recipient institution fees to clarify that account fees are not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Proposed comment 31(b)(1)–1.iv additionally would have explained that a fee that specifically relates to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to on the remittance transfer itself. Proposed 31(b)(1)–1.v would have provided that the terms used to describe the fees and taxes imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi) must differentiate between such fees and taxes.

Insofar as the Bureau is eliminating the requirement to disclose non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider, the Bureau is not adopting the proposed revisions to comments 31(b)(1)–1.ii. Instead, applicable examples concerning the types of fees related to a remittance transfer that must be disclosed have been moved to the commentary to § 1005.30(h), as discussed above. *See* comment 30(h)–1. The Bureau is, however, modifying certain aspects of the remaining commentary in light of the new definitions and the elimination of the requirement to disclose taxes collected on the remittance transfer by a person other than the provider. In comment 31(b)(1)–1.i of the 2013 Final Rule, the reference to § 1005.31(b)(1)(vi) is removed to focus on the scope of fees imposed or taxes collected on the remittance transfer by the provider that are required to be disclosed under § 1005.31(b)(1)(ii). The Bureau is also revising comments 31(b)(1)–1.ii, 31(b)(1)–2, and 31(b)(1)–3 of the 2013 Final Rule commentary consistent with new scope of the required disclosures and the movement of certain commentary to 30(h). In addition, the 2013 Final Rule divides existing commentary in 31(b)(1)–1.ii to create a new comment 31(b)(1)–1.iii for clarity.

31(b)(1)(v) Transfer Amount

Section 1005.31(b)(1)(v) of the 2012 Final Rule requires remittance transfer providers to disclose the transfer amount in the currency in which the funds will be received by the designated recipient. Under § 1005.31(b)(1)(v) of the 2012 Final Rule, providers are required to disclose the transfer amount only if applicable fees and taxes are imposed by persons other than the provider under § 1005.31(b)(1)(vi), in order to demonstrate to the sender how such fees reduce the amount received by the designated recipient. Insofar as § 1005.31(b)(1)(vi) in the 2013 Final Rule will now only require disclosure of covered third-party fees, the Bureau has made conforming changes to the appropriate reference in

[5] The Bureau has made conforming changes throughout the 2013 Final Rule.

§ 1005.31(b)(1)(v) to clarify that the section implicates covered third-party fees only rather than all fees and taxes imposed on the remittance transfer by a person other than the provider.

31(b)(1)(vi) Covered Third-Party Fees

Section 1005.31(b)(1)(vi) of the 2012 Final Rule requires remittance transfer providers to disclose any fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient. As discussed above, the Bureau is refining the 2012 Final Rule with respect to the disclosure of certain recipient institution fees and foreign taxes. The rationale for these changes is discussed below.

Disclosure of Recipient Institution Fees

Since the Board first proposed to amend Regulation E to implement the Dodd-Frank Act's remittance transfer provisions, industry participants and representatives have argued that particularly for remittance transfers that take place over an open network, the requirement to disclose third-party fees is unduly burdensome, if not impossible, given the potential number of institutions involved in any one transfer and the fact that remittance transfer providers typically have no direct relationships with recipient institutions. In issuing the February Final Rule, the Bureau recognized the challenges for providers in disclosing fees imposed by third parties, but determined that the disclosure of third-party fees would provide senders with greater transparency regarding the cost of a remittance transfer consistent with the purposes of the EFTA.

Consequently, § 1005.31(b)(1)(vi) of the 2012 Final Rule required providers to disclose fees imposed by persons other than the provider (including fees imposed by the designated recipient's institution) and required that such fees be taken into account when calculating the disclosure of the amount to be received under § 1005.31(b)(1)(vii). In view of Congress' recognition that these determinations would be difficult in the context of open network transactions by financial institutions, *see* EFTA section 919(a)(4), § 1005.32(a) permitted insured institutions to estimate the amounts required to be disclosed pursuant to §§ 1005.31(b)(1)(vi) and (vii) for an interim period when such transfers are sent from a sender's account with the institution and the remittance transfer cannot determine the exact amounts for reasons beyond its control.

As noted above, after the Bureau published the February Final Rule, industry participants and representatives continued to express concern through comment letters and other fora that, where a designated recipient's institution charges the recipient fees for receiving a transfer in an account, the remittance transfer provider would not reasonably know, or be able to estimate, the amount of fees that might apply because fees might vary based on agreements between the recipient and the recipient institution. Relatedly, industry participants and representatives requested clarification on whether and how to disclose recipient institution fees that can vary based on the recipient's status with the institution, the account type, the quantity of transfers received, or other variables that are not easily knowable by the sender or the provider.

In response to these concerns, in the December Proposal, the Bureau proposed to provide clarification relating to which recipient institution fees remittance transfer providers were required to disclose and additional flexibility and guidance on how recipient institution fees could be disclosed. Proposed comment 31(b)(1)–1.ii would have provided additional examples to distinguish between fees that are specifically related to the remittance transfer and therefore required to be disclosed under § 1005.31(b)(1)(vi), including fees that are imposed by a recipient's institution for receiving a wire transfer, and other types of recipient institution fees that are not specifically related to a remittance transfer, such as a monthly maintenance fee, and therefore not required to be disclosed. For example, the proposed comment would have noted that fees that specifically relate to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. Moreover, similar to the treatment of taxes imposed by a person other than the remittance transfer provider under the 2012 Final Rule, the Bureau proposed to add comment 31(b)(1)(vi)–4 to clarify that a provider could rely on a sender's representation regarding variables that affect the amount of fees imposed by the recipient's institution for receiving a transfer in an account where the provider did not have specific knowledge regarding such variables.

Additionally, the December Proposal proposed to allow all remittance transfer providers, not just insured institutions covered by the temporary exception, the flexibility to estimate on a permanent basis certain fees imposed by a designated recipient's institution for receiving a transfer into an account. Specially, where a provider did not have specific knowledge regarding variables that affect the amount of fees imposed by a designated recipient's institution for receiving a transfer in an account, proposed § 1005.32(b)(4)(i) would have permitted a provider to disclose the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable, as determined based on either the recipient institution's fee schedules or information ascertained from prior transfers to that same institution.

The December Proposal additionally provided in proposed § 1005.32(b)(4)(ii) and its accompanying commentary that, if the remittance transfer provider could not obtain such fee schedules or did not have such information, the provider could rely on other reasonable sources of information, including fee schedules published by competitor institutions, surveys of financial institution fees, or information provided by the recipient institution's regulator or central bank as long as the provider disclosed the highest fees identified through the relied-upon source. The Bureau sought comment on all aspects of this proposal.

Although most industry commenters stated that they supported the Bureau's efforts to provide additional flexibility to remittance transfer providers to determine applicable recipient institution fees, many industry commenters argued that the December Proposal would not significantly reduce the burden of disclosing recipient institution fees that are not already known. Describing providers' efforts to come into compliance with the 2012 Final Rule, industry commenters stated that efforts to obtain fee information had largely been hampered by the difficulty of obtaining information from recipient institutions with whom providers had no direct relationship, particularly in cases in which fees were governed by contracts between recipient institutions and recipients, *i.e.,* those institutions' customers. In additional outreach by the Bureau, one large bank provider and correspondent reported that it had attempted to survey recipient institutions with which it had regular contact, but that the vast majority of institutions had either not provided the requested fee information or failed to respond altogether. In comment letters, as well as outreach both before and after the publication of the December Proposal, industry participants stated that they had difficulty explaining to foreign institutions what was being requested and why the foreign

institutions should provide that information. Industry participants further stated that recipient institutions declined to provide the requested fee information, citing proprietary, competitive, and privacy concerns associated with releasing information about their fee schedules and their contractual relationships with their customers.

Some industry participants stated that as a result of the difficulty in obtaining fee information from individual institutions, even with the flexibility that the December Proposal would have allowed, they anticipated that the challenges associated with obtaining fee schedules or conducting fee surveys might force them to limit services to countries where fee information was more readily obtainable or where the transfer volume was significant enough to warrant additional efforts to obtain fee information. Though the pertinent comment letters focused on the December Proposal, the arguments echoed concerns that industry participants had previously expressed prior to the 2012 Final Rule with regard to any requirement to disclose fees imposed by persons other than the remittance transfer provider. Industry commenters further opined more generally, as they had prior to the 2012 Final Rule, that a significant number of providers might choose to exit the market altogether, even if the Bureau were to adopt the December Proposal, due to the difficulty of disclosing recipient institution fees.

In addition, several industry commenters stated that compared to the 2012 Final Rule, the proposed estimation methodologies would not improve and instead could diminish the quality of the disclosures received by senders or senders' ability to comparison shop. With respect to the Bureau's proposal to add commentary clarifying that remittance transfer providers could rely in certain circumstances on senders' representations regarding the variables that affect the amount of fees to be imposed by a recipient's financial institution (*see* proposed § 1005.32(b)(4)), several industry commenters argued that if the sender knew the fees that applied to the recipient's account, then it is likely the sender was getting such information from the recipient, and in such cases the disclosure of recipient institution fees would not provide additional transparency to the sender. By contrast, to the extent that the sender had not received information on the variables that affect fees from the designated recipient, industry commenters argued that relying on a sender's representation would be unlikely to provide reliable information. Industry commenters repeated industry's longstanding assertion that recipients are in the best position to know what fees their institutions impose on receiving transfers, and suggested that the Bureau reconsider its decision to mandate disclosure of such fees or provide a database of fees upon which providers could rely.

Many industry commenters also expressed concern with respect to the Bureau's proposal to allow remittance transfer providers to disclose an estimate of the highest possible recipient institution fee that could be imposed on the remittance transfer with respect to any unknown variable (*see* proposed § 1005.32(b)(4)), as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution. Commenters stated that if each provider employed its own methodology based on its own research, the highest possible fee estimates would vary, sometimes widely, across institutions. Commenters argued that this could cause consumer confusion and undermine comparison shopping, as senders would have little insight into which estimation model was accurate. Although certain limited estimation is permitted under the 2012 Final Rule for some transfers sent by insured institutions, *see* § 1005.32(a) and (b), commenters argued that using the additional estimation methodologies permitted under the December Proposal would lead to greater degrees of inaccuracy because of the requirement to disclose the highest estimate possible with respect to certain recipient institution fees where such fees might be unlikely apply. Furthermore, the proposed estimation methodology would have differed from the bases for estimates described in existing § 1005.32(c), which permit a provider to base an estimate on an approach not listed in subpart B of Regulation E so long as the designated recipient receives the same, or greater, amount of funds than the provider disclosed pursuant to § 1005.31(b)(1)(vii).

Commenters also suggested that under either the 2012 Final Rule or the December Proposal, smaller institutions would be at a disadvantage, compared to their larger competitors, because they would have fewer resources to collect and maintain extensive data sets regarding account fees for every location to which they did or could send a remittance transfer. Several industry commenters further opined that remittance transfer providers that could provide lower estimates could have a competitive advantage over providers that provided higher (but potentially more accurate) estimates because the providers with lower estimates would appear to be providing designated recipients with more funds, even though the actual fee imposed by the recipient institution for the same designated recipient should generally be the same for transfers sent by the same sender to the same recipient institution.

Finally, some industry commenters argued there was a significant risk that if the highest possible fee a recipient institution could impose on receiving a remittance transfer was disclosed, a sender might unnecessarily overfund a remittance transfer to ensure that the designated recipient received a certain amount. For example, a commenter explained, that a sender might want to send a remittance transfer to a merchant to pay for a purchase. The merchant, per its agreement with the receiving institution, might be charged an incoming wire transfer fee. Although the merchant would not expect the sender to pay this fee, as the merchant had incorporated such cost into its overhead, the sender might believe that he or she is responsible for covering this fee and might increase the amount transferred by the amount of the disclosed fee.

Because of the limitations they perceived with estimates disclosed under the Bureau's methodology described in the December Proposal, the majority of industry commenters requested that the Bureau eliminate the required disclosure of recipient institution fees altogether. Several of these industry commenters argued, as commenters had argued as part of the 2012 rulemakings, that section 1073 of the Dodd-Frank Act did not expressly require disclosure of recipient institution fees and urged the Bureau to eliminate the required disclosure of recipient institution fees. A few commenters went further and suggested that the Bureau should eliminate the required disclosure of intermediary fees as well. Alternatively, industry commenters suggested that the Bureau delay the implementation date for the disclosure of recipient institution fees until resources for ascertaining such fees could be developed, although such commenters did not indicate that such resources were being developed or that they would soon be available.

Consumer group commenters were divided in their reactions to the December Proposal's provisions regarding the disclosure of recipient institution fees. Although some

consumer group commenters favored the Bureau's approach in providing increased flexibility and guidance with respect to the disclosure of recipient institution fees, other consumer group commenters believed that the methods of estimation proposed by the Bureau would prove to be problematic for senders and suggested either that the allowance for such estimation be made temporary or that the required disclosure of recipient institution fees be eliminated.

Among consumer group commenters who favored the disclosure of recipient institution fees, some opined that recipient institution fee information could become readily available given current technology, and they encouraged the Bureau to, at the very least, make any additional estimate provisions temporary in nature. This would, these commenters argued, provide strong incentives to industry to create databases with the necessary information for compliance. In addition, one comment letter argued that permitting ''estimated'' price disclosures essentially permits a continuation of the status quo that Congress intended to change by adopting section 1073 of the Dodd-Frank Act. The commenter further suggested that although a permanent exemption from any disclosure requirements would be premature, a delay in requiring disclosure of recipient institution fees may be needed to provide enough time and the proper incentives for some providers to update their information systems in order to capture this information.

By contrast, other consumer group commenters maintained that it was appropriate to eliminate the obligation to disclose recipient institution fees given the difficulty remittance transfer providers (or their partners) face in determining these fees. These commenters argued that, given the inaccuracies inherent in estimating the applicable fees to be applied, senders would be better served by an alternative generic disclosure noting that recipient institutions may charge account fees, rather than requiring the specific disclosure of such fees.

In light of information received through comment letters, additional outreach, and the Bureau's independent monitoring of efforts to implement the 2012 Final Rule, the Bureau believes that it is necessary and proper both to effectuate the purposes of the EFTA and to facilitate compliance to exercise its authority under EFTA section 904(c) to eliminate the requirement to disclose recipient institution fees for transfers into an account, except where the recipient institution is acting as an agent of the provider.

As stated in the February Final Rule, the Bureau believes that disclosures regarding the fees imposed by persons other than the remittance transfer provider can benefit senders by making them aware of the impact of these fees, helping to decide how much money to send, facilitating comparison shopping, and aiding in error resolution. As described in the February Final Rule, in recent years, a number of concerns with regard to the clarity and reliability of information provided to consumers sending remittance transfers have been identified. Congressional hearings prior to enactment of the Dodd-Frank Act focused on the need for standardized and reliable pre-payment disclosures, suggesting that disclosure of the amount of money to be received by the designated recipient is particularly critical. Research suggests that consumers place a high value on reliability to ensure that the promised amount is made available to recipients. *See* 77 FR 6199 (and sources cited therein).

Despite the public interest in the disclosure of recipient interest fees, however, the Bureau believes that requiring disclosure of such fees in cases in which the recipient institution is not an agent of the provider would at this time either require a substantial delay in implementation of the overall Dodd-Frank Act regime for remittance transfers or produce a significant contraction in access to remittance transfers, particularly for less popular corridors. The Bureau believes that both of these results would substantially harm consumers and undermine the broader purposes of the statutory scheme. Accordingly, the Bureau has constructed the exception to relieve the obligation to disclose recipient institution fees absent an agency relationship between the remittance transfer provider and the recipient institution.

The Bureau believes that, in practice, this adjustment of the 2012 Final Rule will affect a minority of remittance transfers. While information on the volume of open-network transfers is limited, the Bureau believes that closed network transfers sent through agents—*i.e.,* transfers for which remittance transfer providers must continue to disclose all third-party fees in accordance with the 2012 Final Rule—account for the majority of remittance transfers.

For the minority of transfers where the exception applies because there is no agency relationship between the remittance transfer provider and the recipient institution, the Bureau has concluded that finalizing the proposed exception in § 1005.32(b)(4) (which would have permitted estimates in certain circumstances) would have significant risks and disadvantages to senders of remittance transfers. First, despite the greater flexibility that the December Proposal would have provided concerning estimation methodologies, the Bureau is concerned that many remittance transfer providers still would have curtailed services particularly outside of heavily used corridors. Second, the Bureau is concerned that the resulting estimates would have varied so widely that their use to consumers in calibrating transfer amounts and comparison shopping would have been limited.

The Bureau believes that given current limitations, it is appropriate to require use of a more generic disclaimer to warn consumers where recipient institution fees may apply and to change the model forms in a way that will reduce the risk of consumer confusion in attempting to make comparisons where estimates are provided. The Bureau also believes that it is important to encourage estimates and increasingly reliable methodologies over time, and will continue dialogue with interested stakeholders about how best to make progress toward this goal.

The Bureau's conclusion rests in large part on its understanding of the open network systems for sending remittance transfers. As described above, these networks allow remittance transfer providers to send to accounts at banks worldwide. However, providers have limited authority or ability to monitor or control the recipient institutions in such networks. Although the Bureau had expected that industry's implementation efforts would result in the development of the compilation of reliable and current information concerning fees imposed by many recipient institutions for most corridors, the process has been slower and harder than expected and the lack of comprehensive information could lead providers to limit their offerings. Given the current environment, the Bureau believes that estimating, or in some cases, determining the actual recipient institution fees for transfers to accounts consistent with the 2012 Final Rule would be difficult or impracticable given the myriad institutions to which such remittance transfers may be sent and the myriad fee schedules that may apply across these institutions.

Even under the Bureau's proposal to provide additional flexibility for remittance transfer providers in estimating certain recipient institution

fees for transfers to accounts, the comment letters and the Bureau's outreach suggest that the burden of obtaining and maintaining applicable fee information sufficient to provide the permitted estimates in all cases would still be substantial. The Bureau is concerned that even if it adopted the December Proposal, the requirements to disclose recipient institution fees might cause a number of providers to raise their prices, significantly reduce their offerings, or exit the market due to the requirements related to the disclosure of recipient institution fees. If any price increase were similar to the size of a recipient institution fee, that alone might offset the benefit of improved information about the size of such fees. Furthermore, as the Bureau stated in the December Proposal, the Bureau believes that the loss of market participants would be detrimental to senders by decreasing market competition and the convenient availability of remittance transfer services.

Moreover, the Bureau is concerned that the estimate methodologies proposed in the December Proposal would have produced disclosures that varied so widely that their use to senders in calibrating transfer amounts and comparison shopping would have been limited. In many cases, the December Proposal would have required the remittance transfer provider to over-estimate recipient institution fees, by disclosing the highest possible fee that could be imposed on the remittance transfer with respect to any unknown variable. To the extent providers used differing methodologies upon which to base their estimates, the disclosed fees could vary significantly across institutions, making it difficult for senders to decide how much money to transmit.

In addition, because these fees would be separately disclosed and included within the total to recipient on the disclosure forms, differences in amounts disclosed among remittance transfer providers could lead senders to mistakenly focus on discrepancies within these fees when comparison shopping, even though the actual fee would likely be the same regardless of the provider so long as the sender transmitted the same amount to the same designated recipient at the same institution using the same transfer method. While the Bureau believes that it is important to encourage estimates and increasingly reliable methodologies over time, the Bureau has concluded that given current limitations it is appropriate to require use of a more generic disclaimer to alert senders where recipient institution fees may apply and to change the model forms in a way that will reduce the risk of consumer confusion in attempting to make comparisons where estimates are provided. By providing the disclaimer, senders themselves can investigate such fees. In addition, as discussed in the section-by-section analysis of § 1005.31(b)(1)(viii), providers may be incentivized to seek such information to better compete with providers providing more detailed price information. The Bureau believes this amendment to the disclosure requirements will best preserve senders' access to competitive remittance transfer markets, while facilitating continued information-gathering about such fees both by senders and providers.

Alternatively, the Bureau considered further delaying implementation of the section 1073 protections, to allow remittance transfer providers to continue to seek more reliable fee information in order to reduce implementation burdens and make fee-related disclosures more accurate and thus more useful for senders. However, the Bureau believes that it is critical to provide senders timely access to the important new consumer protection benefits of the 2012 Final Rule including rights to cancellation and error resolution.

Accordingly, the Bureau has tailored its amendments to § 1005.31(b)(1)(vi), and as discussed below, § 1005.31(b)(1)(vii), to focus on the third-party fees that the Bureau believes are most difficult for remittance transfer providers to disclose. Based on the Bureau's outreach, it appears that providers sending transfers through open network systems have had considerably more success in obtaining information needed to estimate or disclose accurately fees imposed by intermediary institutions, as compared to recipient institutions that maintain ongoing customer relationships with individual designated recipients. Some providers (or business partners) have changed or contemplated changing the methods they use to send transfers between bank accounts, in order to avoid the imposition of any intermediary fees. In addition, some providers have worked with correspondents to understand such intermediary fees. Thus, the Bureau is not eliminating the requirement to disclose pursuant to § 1005.31(b)(1)(vi) intermediary bank fees or to include such amount in the calculation of the amount required to be disclosed under § 1005.31(b)(1)(vii).

Similarly, although the Bureau is making an adjustment for recipient institution fees that it believes industry cannot reasonably disclose, it is not adjusting the required disclosures for transfers that a recipient picks up at a paying agent. As noted above, the additional guidance included in the December Proposal targeted situations in which providers did not have specific knowledge regarding variables that affect the amount imposed by the recipient's institution for receiving a transfer in an account. By contrast, where the designated recipient's institution is an agent of the remittance transfer provider, the Bureau believes the provider should have access to or be able to contract concerning the disclosure of any fees imposed by such institution. Consequently, the Bureau is maintaining the provider's obligation under the 2012 Final Rule to disclose a designated recipient institution's fees where such recipient institution is acting as an agent of the provider in the remittance transfer. Through a provider's contractual arrangements with its agents, the Bureau believes that such information should be readily available to or obtainable by a provider or that the provider can control such fees, based on the terms of the contract between the provider and such agent.

For similar reasons, the Bureau is maintaining the requirement to disclose fees assessed for remittance transfers to credit cards, prepaid cards, or virtual accounts held by an Internet-based or mobile phone company that is not a bank, credit union, or equivalent institution. *See* comment 30(h)–3. In the December Proposal, the Bureau did not specifically propose to allow estimation of these amounts. Although a few comment letters suggested that the proposed estimates exception should be expanded to cover more than depository institution accounts, such as general purpose reloadable (or prepaid) cards, mobile phones, or mobile or electronic wallets, no commenters suggested that obtaining this information would be as burdensome as the disclosure of depository institution fees. Indeed, upon further outreach, industry participants largely confirmed that currently the majority of such transactions currently take place within a single network whereby such fees are a matter of contract. The Bureau believes that the systems for offering such transfers are still nascent and that currently most of these transfers are provided through systems in which remittance transfer providers have contractual arrangements with the recipient institutions, or the providers and the recipient institutions operate within one single network. The Bureau further believes that these arrangements

will likely permit providers to exercise some control over, or learn about, fees charged by recipient institutions. As these systems grow, the Bureau expects that providers, and any associated networks, can design systems so that any associated fees with respect to such transfers are transparent to providers and senders alike.

The Bureau does not believe that the same sort of evolution can happen as quickly or easily in existing open network systems, and in particular for the interbank wire transfer system. These systems use communication and settlement protocols that have been developed over decades (or longer) and assume that participating institutions will exercise little control over each other.[6] Furthermore, these systems depend on the participation of many foreign entities that have no duty or incentive to comply with subpart B of Regulation E. Consequently, for purposes of determining the fees imposed on the remittance transfer by the designated recipient's institution for receiving a remittance transfer into an account under § 1005.30(h)(2), the Bureau includes transfers into an asset account, regardless of whether or not it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. *See* comment 30(h)–3. The Bureau believes that these institutions are likely subject to legacy systems that cannot easily be modified to capture fee information.

In light of these conclusions, to effectuate the purposes of the EFTA, the Bureau is exercising its authority under EFTA sections 904(a) and (c) to maintain in § 1005.31(b)(1)(vi) the remittance transfer provider's obligation to disclose covered third-party fees and that such fees be included in the amount disclosed pursuant to § 1005.31(b)(1)(vi), discussed further below. The Bureau believes that providing a total to recipient that reflects the impact of such fees, and separately disclosing these fees, will provide senders with a greater transparency regarding the cost of a remittance transfer.

Insofar as the Bureau is eliminating the required disclosure of non-covered third-party fees, the Bureau is also not adopting the suggestion of several industry and consumer group commenters that to facilitate compliance, the Bureau help develop and maintain a database of recipient institution fees that could be accessed by remittance transfer providers. The Bureau continues to believe that because providers are engaged in the business of sending remittance transfers and likely will develop relationships with recipient institutions over time, providers are in a better position than the Bureau is to determine applicable fee information. The Bureau will continue to monitor implementation of this rule and market developments, including whether better information about recipient institution fees becomes more readily available over time. The Bureau will also engage in stakeholder dialogue about methods to encourage improvements in communications methodologies and data gathering so as to promote the provision of increasingly accurate estimates and disclosures of actual fees over time.

Disclosure of Foreign Taxes

Commenters' arguments regarding the disclosure of foreign taxes have largely paralleled their arguments regarding the disclosure of recipient institution fees. Notably, since the Board's proposal, industry has argued that the requirement to disclose foreign taxes is unduly burdensome given the number of jurisdictions that may impose taxes and the challenges of determining whether or how various tax exceptions or exclusions may apply. Although the Bureau recognized the challenges for remittance transfer providers in disclosing foreign taxes, the Bureau also believed that this disclosure would provide senders with greater transparency regarding the cost of a remittance transfer, which the Bureau believed was consistent with the purposes of the EFTA. Consequently, § 1005.31(b)(1)(vi) of the 2012 Final Rule generally would have required that providers disclose foreign taxes and take such taxes into account when calculating the disclosure of the amount to be received under § 1005.31(b)(1)(vii). This disclosure of taxes would have included foreign taxes imposed by a country's central government, as well as taxes imposed by regional, provincial, state, or other local governments.

After the Bureau published the 2012 Final Rule, industry continued to express concern about the ability of remittance transfer providers to disclose these foreign taxes in two respects. First, industry argued that it is significantly more burdensome to research and disclose subnational taxes than to research and disclose only foreign taxes imposed by a country's central government, with little commensurate benefit to consumers. Second, industry suggested that the existing guidance on the disclosure of foreign taxes is insufficient where variables that influence the applicability of foreign taxes are not easily knowable by the sender or the provider.

In light of these comments, in its December Proposal, the Bureau proposed two revisions to the 2012 Final Rule regarding foreign tax disclosures. First, the proposal would have revised § 1005.31(b)(1)(vi) to state that only foreign taxes imposed by a country's central government on the remittance transfer need to be disclosed. Proposed comment 31(b)(1)(vi)–3 would have further clarified that regional, provincial, state, or other local foreign taxes do not need to be disclosed, although the remittance transfer provider could choose to disclose them. In the event that the subnational taxes were not disclosed, the proposal would have required that a provider state that a disclosure is ''Estimated.'' Consistent with this amendment, regional, provincial, state, or other local foreign taxes would not have needed to be taken into account when calculating the disclosure of the amount to be received under § 1005.31(b)(1)(vii).

Second, the December Proposal also would have provided additional flexibility regarding the determination of foreign taxes imposed by a country's central government. Under § 1005.31(b)(1)(vi), if a remittance transfer provider did not have specific knowledge regarding variables that affect the amount of these taxes imposed by a person other than the provider, the provider could disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable. Where a provider relied on this estimation method, the proposal would have required that a provider state that related disclosures are ''Estimated.''

The Bureau sought comment on both aspects of these proposed changes, including whether the proposed revisions would facilitate compliance and how the revisions would impact senders. Similar to comments about the proposed revisions to the disclosure of recipient institution fees, the Bureau received numerous comments from industry and consumer groups on its proposed elimination of the subnational

[6] The modern open network banking system evolved slowly over the seventeenth and eighteenth centuries and did not become electronic and automated until the 1970s. The earliest banks did not transfer money between themselves. Over time, however, smaller or more remote banks began to rely on larger mutual or central banks that they all trusted to facilitate transfers of funds although the remote banks had no relationship with one another. Into the mid-Twentieth Century, this system became computerized and banks could electronically message one another. *See* Ben Norman, *et al.,* The History of Interbank Settlement Arrangements: Exploring Central Banks' Role in the Payment System (June 2011), available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1863929.*

tax disclosure and also its proposed methods for the estimation of taxes imposed by a foreign country's central government.

With respect to the proposed change related to the elimination of the requirement to disclose subnational taxes and to include such taxes in the calculation of the amount to be received, there was uniform support from industry commenters. Nearly all industry commenters expressed concern that it was infeasible to attempt to research all potential jurisdictions that might impose a subnational tax. Further, industry commenters noted that there would be an ongoing and potentially significant cost required to maintain information related to all subnational tax laws throughout the world given the number of potential jurisdictions that could impose a tax. Additionally, in terms of the feasibility of the disclosure of subnational taxes, one money transmitter also stated that it would be difficult for it to disclose subnational taxes given that its customers were not required, when sending a transfer, to specify a sub-region within a country where the transfer would be picked up.

Another money transmitter also stated that, in its experience, it believed that subnational taxes were rare. Although this commenter did not cite any examples of tax practice in specific jurisdictions, this commenter argued that many localities wanted to encourage the inflow of transfers, and therefore, would be unlikely to impose subnational taxes. This commenter and others stated that the cost to determine, in every case, whether subnational taxes applied, a cost that might be passed on to all senders, would outweigh the benefits given that it appeared that such taxes rarely applied in practice.

In contrast to the uniform support by industry commenters for the elimination of the requirement to disclose subnational taxes, consumer group commenters were divided regarding their views about the proposed elimination of the requirement to disclose subnational taxes. Some consumer group commenters opposed the proposed change and stated that full disclosure of the exact amount of foreign taxes was critical in order for senders to be aware of exactly how much money would be received. They stated that elimination of the requirement to disclose subnational taxes would harm senders because they would not know with certainty how much money would ultimately be received. Other consumer group commenters, however, stated that the burden of researching and disclosing subnational taxes outweighed the relative benefit to senders. These consumer group commenters noted that some remittance transfer providers could withdraw from the market or increase prices if required to research and disclose subnational taxes.

With respect to the Bureau's proposal to allow remittance transfer providers increased flexibility to estimate the taxes imposed by a country's central government, many industry commenters expressed concern that the December Proposal did not sufficiently ease the burden of researching foreign taxes. These industry commenters raised several concerns with respect to the proposed estimated disclosure of taxes imposed by a foreign country's central government. Some industry participants commented that they did not have the capability to research the relevant tax laws in the first place because they did not have foreign contacts, or, alternatively, that they did not have the resources to expend to determine the applicable foreign tax laws. Thus, they asserted that an ability to estimate would not facilitate compliance since such estimation would require an underlying knowledge of the foreign tax laws.

Industry commenters, particularly smaller banks and credit unions, also noted that remittance transfer providers were reluctant to rely on information from third-party service providers (such as larger correspondent institutions) because they would have no means to verify the accuracy of the information provided by the third-parties. Further, even where the tax information was accurate, some industry commenters stated that there could be a high cost associated with relying on a third-party provider to obtain that foreign tax information. Similar to industry comments about the disclosure of subnational taxes, commenters stated that these costs not only included the upfront costs of acquiring the tax information but also ongoing costs required to maintain and update tax information. For example, commenters expressed concern that, even if a provider (or a third-party selling the tax information) determined that a particular country did not tax remittance transfers, the provider would need to continue to monitor that country's tax law to know whether any new tax laws were enacted in the future.

Industry commenters (as well as some consumer group commenters) stated that some of the burden resulting from the disclosure of foreign taxes imposed by a country's central government could be solved if the Bureau itself developed a tax database that was made available to remittance transfer providers. Industry commenters noted that a Bureau-provided database would eliminate the cost and potential inaccuracy that could result from each provider's individual attempts to determine the applicable foreign taxes.

Along similar lines, the Bureau learned through outreach that at least one trade association is developing a database containing information about foreign taxes imposed on remittance transfers by a country's central government. The trade association informed the Bureau that, by working with a third-party, it thought it could eventually determine the relevant tax laws for most countries. The trade association, however, stated that there were several challenges associated with determining and disclosing the applicable tax under the proposed estimation method. According to the trade association and other commenters, one concern was that many foreign taxes have exceptions and exclusions that are not imposed uniformly on all transfers. The trade association noted that, even if a database listed applicable tax laws, it might be difficult for remittance transfer providers, particularly smaller providers, to apply these exceptions and incorporate the exceptions into computer programs or onto forms to arrive at an accurate tax disclosure. Some industry commenters also noted that, if a provider did not apply an exception, that provider might appear to be imposing a higher tax than another provider that applied the exception, even if the tax is the same. Thus, these commenters stated that a sender might misidentify the cheapest provider.

Relatedly, several other industry commenters expressed concern that a tax law might be misinterpreted or misunderstood by the remittance transfer provider because of the challenges of interpreting foreign laws. As a result, several industry commenters and a trade association stated that the Bureau should provide a safe harbor for providers that use some reasonable processes to acquire the tax information. Other commenters stated that they would favor a safe harbor whereby, if the provider relied on some reasonable source of information in obtaining tax information, that provider would not be liable if the disclosed tax was incorrect.

Industry commenters also echoed similar comments to those made with respect to the December Proposal's provisions regarding the recipient institution fee disclosures, stating that the estimated tax disclosure would be of limited benefit to senders because they believed that in many instances the same tax likely would apply to all

transfers to a particular country. As a result, a disclosure of the foreign tax would not improve a sender's ability to comparison shop among remittance transfer providers. In addition, other commenters noted that because the Bureau's proposed estimation method required a disclosure of the highest possible foreign tax that could be imposed with respect to any unknown variable, a sender might transfer more money than was required to compensate for the high estimated tax that the sender believed would be deducted. The commenters noted, for example, that if a sender was transferring funds to a foreign merchant, the higher disclosed tax could harm the sender who inadvertently provided more money than was necessary to pay for a good or service.

In contrast to industry commenters and as with respect to the Bureau's proposal to eliminate the requirement to disclose subnational taxes, consumer groups were divided with respect to their comments about the proposed change to allow estimation to be used in the determination of the foreign country tax disclosure. Some consumer groups stated that the estimation of foreign taxes would harm senders because they would not know exactly how much money would be received. In contrast, other consumer groups supported the Bureau's proposed estimation method for those taxes imposed by a country's central government. These consumer groups stated that the Bureau's proposed estimation method would facilitate compliance, and thereby encourage providers to stay in the market or prevent providers from increasing prices.

Similar to its reasoning with respect to the elimination of the requirement to disclose certain recipient institution fees, as a result of comments received, additional outreach, and the Bureau's independent monitoring of efforts to implement the 2012 Final Rule, the Bureau believes it is necessary and proper both to further the purposes of the EFTA and to facilitate compliance to exercise its exception authority under EFTA section 904(c) to eliminate the requirement that remittance transfer providers include taxes collected by a person other than the provider—including both subnational taxes and taxes imposed by a foreign country's central government, in the calculation of the amount to be disclosed under § 1005.31(b)(1)(vii). Consistent with this revision, the Bureau is also eliminating the requirement to disclose taxes imposed by a person other than the remittance transfer provider under § 1005.31(b)(1)(vi) since such taxes are no longer necessary to clarify the calculation of the amount to be received under § 1005.31(b)(1)(vii). Under the 2013 Final Rule, a provider continues to be required to disclose any taxes collected by the provider, as described under § 1005.31(b)(ii), but providers are no longer required to disclose taxes collected by other persons.

As stated in the February Final Rule, the Bureau believes that disclosures regarding the taxes collected by a person other than the remittance transfer provider can benefit senders by making them aware of the impact of these taxes on the total amount transferred, deciding how much money to transfer, facilitating comparison shopping, and aiding in error resolution. Yet, while this foreign tax information is important for consumers, the Bureau is concerned that requiring disclosure of taxes collected by a person other than the provider could at this time produce increased costs for all transactions or result in a significant contraction in access to remittance transfers, particularly for less popular corridors. Similar to its decision about eliminating the requirement to disclose certain recipient institution fees, the Bureau believes that both of these results would substantially harm consumers and undermine the broader purposes of the statutory scheme. Accordingly, the Bureau has concluded that in the current environment, this amendment to the tax disclosure requirements will best preserve access to competitive prices for remittance transfers for a wide range of countries.

As with fees, one key factor in the Bureau's decision was a concern that the required tax disclosure might limit the availability of remittance services to certain countries or result in an increased cost for many transfers. With respect to cost increases, under the 2012 Final Rule and the December Proposal, most remittance transfer providers would have needed to conduct research to determine (or purchase information regarding) the relevant foreign tax laws, potentially for many countries. These providers would also need to expend resources to update this information on a regular basis. Although one industry association has been undertaken to develop a database of applicable central government taxes, that association acknowledged several challenges both in developing the database and with how individual providers would make use of the data contained in it. For example, validation and continuous updating of the information collected remains a substantial concern. As described above, the Bureau is concerned that many providers would pass the costs associated with these efforts on to senders in the form of increased prices that would affect remittance transfers across the board, even to countries in which no such taxes are actually imposed. The Bureau also remains concerned that the cost of maintaining the required tax information could cause providers to exit the market, or limit their offerings—even if the requirement was limited to taxes imposed by a foreign country's central government. Some providers, for example, might curtail their services and limit transfers only to the highest traffic corridors in order to minimize their necessary foreign tax law research. Because some providers might restrict their services to certain corridors with less volume, a sender might have limited ability to send transfers to those regions.

As a result, while the Bureau generally believes that senders can benefit from transparency regarding the foreign tax disclosure, in the present market, the cost of obtaining the necessary tax information may exceed the benefit of this information to many senders. As with recipient institution fees, the Bureau also recognizes that in many instances the benefit of the disclosure may be minimized because the actual foreign tax imposed is likely to be uniform across all remittance transfers to a particular person in a particular country (and, therefore, the same tax would apply).[7]

In addition, as with the estimation of recipient institution fees, the disclosure of the highest tax estimates based on any unknown variable, as required in the December Proposal, could result in consumer confusion where providers disclosed different tax estimates. Even if third-party providers developed common databases of information, there is still a risk of inconsistent disclosures depending on providers' knowledge of potentially relevant variables, practices, and interpretations of foreign tax law. The Bureau believes that using the general disclaimer and moving any voluntarily provided estimates or actual numbers lower on the form will help to reduce the risk that senders mistakenly choose providers based on discrepancies in tax estimates. Further, rather than adopting a systematic rule that tends to overestimate tax rates, the Bureau believes that senders may prefer

[7] The Bureau recognizes that this uniformity may not always be the case. For example, a tax could be imposed differently based on whether the tax law treated transfers sent through a closed or open network differently. But, for most transfers, the Bureau believes that a tax law would apply in the same manner where a transfer was of the same amount to the same destination in a country.

to apply different approaches to different types of transfers, for instance by being more conservative about the risk of overfunding a transfer to a business as compared to a family member.

The Bureau also does not believe that it is appropriate or feasible to create a safe harbor for remittance transfer providers that rely on a third-party database or some other third-party source for tax information. At this time, the Bureau is not aware of any data source whose accuracy it can guarantee, absent extensive monitoring. The Bureau is not currently positioned to evaluate the accuracy of each database that might be created nor can it determine whether providers are reasonably researching, interpreting, or applying the applicable foreign tax laws. Similarly, the Bureau does not believe that currently it is positioned to create a database itself. In addition, even if a database existed, as noted above, it would still be necessary to determine how the particular tax laws and exceptions or exclusions applied, and the Bureau believes that providers are better positioned to learn over time how foreign tax laws apply to individual transfers.

Overall, given the current burden of researching the foreign taxes and the potential risks of sender confusion, increased cost, and reduced transfer services, the Bureau believes that the best result at this time is to eliminate the obligation to disclose taxes collected by parties other than the remittance transfer provider and to eliminate the requirement to include this amount in the calculation of the amount to be received by the designated recipient. The Bureau, however, notes that its decision is based on the current feasibility and cost associated with determining or estimating such taxes imposed on a remittance transfer, as well as the potential impact on market structure and pricing practices. The Bureau intends to monitor whether the development and availability of information regarding taxes collected on a remittance transfer by a person other than the provider becomes more feasible in the future. The Bureau will also engage in stakeholder dialogue about methods to encourage improvements in communications methodologies and data gathering so as to promote the provision of increasingly accurate estimates and disclosures of foreign taxes over time.

Conforming Changes to § 1005.31(b)(1)(vi)

In light of the changes the Bureau is making with respect to the disclosure of non-covered third-party fees and foreign taxes, § 1005.31(b)(1)(vi) in the 2013 Final Rule requires only the disclosure of covered third-party fees. The 2013 Final Rule also makes conforming edits to comment 31(b)(1)(vi)–1 to reflect that the disclosure of covered third-party fees must be made in the currency in which the funds will be received by the designated recipient. While the revised § 1005.31(b)(1)(vi) provides that only covered third-party fees be disclosed under this subsection, as discussed below, under § 1005.31(b)(1)(viii) a remittance transfer provider would remain free to disclose separately any non-covered third-party fees or taxes collected by a person other than the provider of which it is aware, to the extent consistent with the parameters of that section.

31(b)(1)(vii) Amount Received

Section 1005.31(b)(1)(vi) of the 2012 Final Rule implements EFTA section 919(a)(2)(A)(i) by requiring that a remittance transfer provider disclose to the sender the amount that will be received by the designated recipient, in the currency in which the funds will be received. As adopted by the 2012 Final Rule, this disclosure must reflect all charges that would affect the amount to be received including any recipient institution fees and taxes imposed by a person other than the provider. As stated above, the Bureau is exercising its exception authority under EFTA section 904(c) to revise § 1005.31(b)(1)(vii) to eliminate the requirement to include non-covered third-party fees and taxes collected on a remittance transfer by a person other than the provider in the calculation of the amount received, consistent with the narrowed scope of § 1005.31(b)(1)(vi). Section 1005.31(b)(1)(vii) of the 2013 Final Rule thus provides that the disclosed amount must be disclosed in the currency in which the funds will be received, using the term ''Total to Recipient'' or a substantially similar term except that this amount shall not include any non-covered third party fee or tax collected by a person other than the provider, whether such fee or tax is disclosed pursuant to § 1005.31(b)(1)(viii).

While § 1005.31(b)(1)(viii) gives the provider the option to disclose non-covered third-party fees and taxes collected on a remittance transfer by a person other than the provider, as discussed below, a provider cannot, in any circumstance, include these amounts in the amount disclosed under § 1005.31(b)(1)(vii). The Bureau believes that eliminating the requirement to include non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider in the calculation of the disclosed amount to be received by the designated recipient is necessary and proper to facilitate compliance and further the purposes of the EFTA because the Bureau is concerned that requiring disclosure of such amounts within the amount disclosed under § 1005.31(b)(1)(vii) might hamper senders' ability to make informed comparisons across similar providers.

The 2013 Final Rule also makes conforming edits to comment 31(b)(1)(vii) to clarify that the amount disclosed pursuant to § 1005.31(b)(1)(vii) must reflect the exchange rate, all fees imposed and all taxes collected on the remittance transfer by the provider, as well as any covered third-party fees as provided by § 1005.31(b)(1)(vi). The Bureau recognizes that in some cases the amount disclosed pursuant to § 1005.31(b)(1)(vii) will not reflect the amount that the designated recipient will ultimately receive due to additional non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider.

31(b)(1)(viii) Statements That Non-Covered Third-Party Fees or Taxes Collected on the Remittance Transfer by a Person Other Than the Provider May Apply

In the December Proposal, the Bureau solicited comment on methods to reduce the burden of required disclosures of fees and taxes imposed on remittance transfers by persons other than the providers and alternative disclosures that could be provided. Several industry and consumer group commenters suggested that in place of requiring exact or estimated disclosures of recipient institution fees or foreign taxes, the Bureau could require a statement within the disclosure forms alerting senders that the total amount received may be reduced by recipient institution fees or foreign taxes. These commenters contended that such a disclosure would ensure that senders are aware of the potential for further reductions in the disclosed amount received, due to fees or taxes that are not disclosed, and would encourage senders and recipients to investigate the fees associated with a transfer to the recipient's financial institution, as compared to those associated with other mechanisms for sending a remittance transfer.

Although the Bureau is eliminating the requirement to calculate and disclose non-covered third-party fees and taxes collected on a remittance transfer by a person other than the

remittance transfer provider, the Bureau strongly believes that it is nonetheless important to inform senders when fees and taxes that are not disclosed may apply to the remittance transfer. Accordingly, to further the purposes of the EFTA, the Bureau believes that it is necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to add § 1005.31(b)(1)(viii), which requires that a provider include, as applicable, a statement indicating that non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider may apply to the remittance transfer and result in the designated recipient receiving less than the amount disclosed pursuant to § 1005.31(b)(1)(vii). Moreover, under this paragraph, a provider may, but is not required to, disclose any applicable non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider using the language set for in Model Forms A–30(b)–(d) of Appendix A to this part or substantially similar language. Any such figures must be disclosed in the currency in which the funds will be received, using the language set forth in Model Forms A–30(b) through (d) of Appendix A to this part, as appropriate, or substantially similar language. The exchange rate used to calculate any disclosed non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider is the exchange rate used in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. Although new § 1005.31(b)(1)(viii) makes the disclosure of the amount of non-covered third-party fees and taxes collected on a remittance transfer by a person other than the provider optional, the Bureau believes that providers may be motivated to collect and disclose such information voluntarily, in the interest of providing high levels of customer service to senders and to better compete for remittance business against other providers.

New comment 31(b)(1)(viii)–1 clarifies that if non-covered third-party fees or taxes collected on the remittance transfer by a person other than the remittance transfer provider apply to a particular remittance transfer, or if a provider does not know if such fees or taxes may apply to a particular remittance transfer, § 1005.31(b)(1)(viii) requires the provider to include the disclaimer with respect to such fees and taxes. Comment 31(b)(1)(viii)–1 additionally clarifies that required disclosures under § 1005.31(b)(1)(viii) may only be provided to the extent applicable. For example, if the designated recipient's institution is an agent of the provider and thus, non-covered third-party fees cannot apply to the transfer, the provider must disclose all fees imposed on the remittance transfer and may not provide the disclaimer regarding non-covered third-party fees. In this scenario, the commentary clarifies, the provider may only provide the disclaimer regarding taxes collected on the remittance transfer by a person other than the provider, as applicable.

New comment 31(b)(1)(viii)–2 explains that § 1005.31(b)(1)(viii) permits a provider to disclose the amount of any non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider. For example, when a remittance transfer provider knows that the designated recipient's institution imposes a fee or that a foreign tax will apply, the provider may choose to disclose the relevant fee or tax as part of the information disclosed pursuant to § 1005.31(b)(1)(viii). The comment also notes that § 1005.32(b)(3) permits the provider to disclose estimated amounts of such taxes and fees, provided any estimates are based on reasonable source of information. *See* comment 32(b)(3)–1. It further provides that where the provider chooses, at its option, to disclose the amounts of the relevant recipient institution fee or tax as part of the information disclosed pursuant to § 1005.31(b)(1)(viii), the provider must not include that fee or tax in the amounts disclosed pursuant to § 1005.31(b)(1)(vi) or (b)(1)(vii).

31(b)(2) Receipt

31(b)(2)(i) Pre-Payment Disclosures on Receipt

Section 1005.31(b)(2)(i) in the 2012 Final Rule provides that the same disclosures included in the pre-payment disclosure must be disclosed on the receipt. As discussed above, the Bureau is adding a new requirement that pre-payment disclosures include disclaimers when non-covered third-party fees or taxes collected on a remittance transfer by a person other than the provider may apply. In addition, as stated above, to facilitate compliance and further the purposes of the EFTA, the Bureau believes it is necessary and proper to exercise its exception authority under EFTA section 904(c) to revise § 1005.31(b)(1)(vii) to eliminate the requirement to include non-covered third-party fees and taxes collected on the remittance transfer by a person other than the remittance transfer provider in the calculation of the amount received, disclosed on the receipt provided to the sender under § 1005.31(b)(2)(i), consistent with the narrowed scope of § 1005.31(b)(1)(vi). As discussed above, to further the purposes of the EFTA, the Bureau also believes that it is necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to require providers to include disclaimers stating, as applicable, that non-covered third-party fees or taxes collected by a person other than the provider may apply to the remittance transfer and result in the designated recipient receiving less than the amount disclosed pursuant to § 1005.31(b)(1)(vii). Accordingly, the Bureau is amending the cross-reference in § 1005.31(b)(2)(i) to require that such disclaimers be provided on the receipt. These changes would also be reflected on a combined disclosure. *See* § 1005.31(b)(3).

31(c) Specific Format Requirements

31(c)(1) Grouping

EFTA section 919(a)(3)(A) states that disclosures provided pursuant to EFTA section 919 must be clear and conspicuous. The 2012 Final Rule incorporates this requirement and sets forth grouping, proximity, prominence, size, and segregation requirements to ensure that it is satisfied. In particular, § 1005.31(c)(1) requires that information about the transfer amount, fees and taxes imposed by a person other than the provider, and amount received by the designated recipient be grouped together. The purpose of this grouping requirement is to make clear to the sender how the total amount to be transferred to the designated recipient, in the currency to be made available to the designated recipient, will be reduced by fees imposed or taxes collected on the remittance transfer by a person other than the remittance transfer provider. As previously discussed, under the 2013 Final Rule the disclosure of non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider is no longer required under § 1005.31(b)(1)(vi), or included in the calculation of the amount required to be disclosed under § 1005.31(b)(1)(vii), but instead is subject to new § 1005.31(b)(1)(viii). Consequently, the 2013 Final Rule amends § 1005.31(c)(1) to group the new § 1005.31(b)(1)(viii) disclosure requirement with the information required by §§ 1005.31(b)(1)(v), (vi), and (vii). The Bureau believes that this grouping will ensure that the sender

will understand that the total amount received by the designated recipient will be affected by these additional fees and taxes as applicable. In addition, the Bureau clarifies that although disclosures provided via mobile application or text message to the extent permitted by § 1005.31(a)(5) generally need not comply with the grouping requirements, information required or permitted by § 1005.31(b)(1)(viii) must be grouped with § 1005.31(b)(1)(vii). The Bureau believes that it is important that the new disclaimers—which advise of potential additional fees and taxes—be grouped with the disclosure of the amount to be received by the designated recipient in order to maximize the likelihood that senders will see the disclaimers and read them in conjunction with the disclosures under § 1005.31(b)(1)(vii). Insofar as the Bureau is requiring that information required or permitted by § 1005.31(b)(1)(viii) be grouped with § 1005.31(b)(1)(vii) for disclosures provided via mobile application or text message, the Bureau is adding guidance in comment 31(c)(1)–1 to explain that to comply with the requirement a provider could send multiple text messages sequentially to provide the full disclosure.

31(c)(2) Proximity

To effectuate EFTA section 919(a)(3)(A), § 1005.31(c)(2) of the 2012 Final Rule also requires that certain disclosures be placed in close proximity to each other. The purpose of this proximity requirement is to prevent such disclosures from being overlooked by a sender. As previously discussed, under the 2013 Final Rule the disclosure of non-covered third-party fees and taxes collected by a person other than the provider is no longer required under § 1005.31(b)(1)(vi); instead, remittance transfer providers are subject to the new disclosure provision of § 1005.31(b)(1)(viii). Consequently, the 2013 Final Rule amends § 1005.31(c) to require that the new § 1005.31(b)(1)(viii) disclaimers be in close proximity with the disclosure required by § 1005.31(b)(1)(vii) (the amount received by the designated recipient). Section 1005.31(c)(2) further notes that disclosures provided via mobile application or text message, to the extent permitted by § 1005.31(a)(5), generally need not comply with the proximity requirements of § 1005.31(c), except that information required or permitted by § 1005.31(b)(1)(viii) must follow the information required by § 1005.31(b)(1)(vii). The Bureau believes that it is important that the new disclaimers—which advise of potential additional fees and taxes—be grouped in close proximity to the disclosure of the amount to be received by the designated recipient. Insofar as the total amount to be received may not include certain items the disclosure of which is no longer required, the disclaimers should be placed in close proximity to, or in the case of disclosures provided via mobile application or text message follow, the disclosure required by § 1005.31(b)(1)(vii) in order to maximize the likelihood that senders will see the disclaimers and read them in conjunction with the amount disclosed pursuant to § 1005.31(b)(1)(vii).

31(c)(3) Prominence

Section 1005.31(c)(3) sets forth the requirements regarding the prominence and size of the disclosures required under subpart B of Regulation E. In light of the new disclaimer required by § 1005.31(b)(1)(viii), as well as the optional disclosures under that paragraph, the Bureau is making conforming edits to § 1005.31(c)(3) to note that the disclosures required or permitted by § 1005.31(b) when provided in writing or electronically must be provided on the front of the page on which the disclosure is printed, in a minimum eight-point font, except for disclosures provided via mobile application or text message, and must be in equal prominence to each other.

Comment 31(c)(4)–2 Segregation

Section 1005.31(c)(4) provides that written and electronic disclosures required by subpart B must be segregated from everything else and contain only information that is directly related to the disclosures required under subpart B. Comment 31(c)(4)–2 in the 2012 Final Rule clarifies that, for purposes of § 1005.31(c)(4), the following is directly related information: (i) The date and time of the transaction; (ii) the sender's name and contact information; (iii) the location at which the designated recipient may pick up the funds; (iv) the confirmation or other identification code; (v) a company name and logo; (vi) an indication that a disclosure is or is not a receipt or other indicia of proof of payment; (vii) a designated area for signatures or initials; (viii) a statement that funds may be available sooner, as permitted by § 1005.31(b)(2)(ii); (ix) instructions regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before they are returned to the sender; and (x) a statement that the provider makes money from foreign currency exchange. In light of new § 1005.31(b)(1)(viii) permitting certain optional disclosures, the Bureau is amending this list to clarify that the optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider is directly related information.

31(f) Accurate When Payment Is Made

Section 1005.31(f) of the 2012 Final Rule states that except as provided in § 1005.36(b), disclosures required by this section must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted by § 1005.32. In light of the new disclaimer required by § 1005.31(b)(1)(viii), as well as the optional disclosures under that paragraph, the Bureau is making conforming edits to § 1005.31(f) and comment 31(f)–1 to note that the disclosures required by § 1005.31(b) or permitted by § 1005.31(b)(1)(viii) must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted by § 1005.32. Comment 31(f)–1 further notes that while a remittance transfer provider is not required to guarantee the terms of the remittance transfer in the disclosures required or permitted by § 1005.31(b) for any specific period of time, if any of the disclosures required or permitted by § 1005.31(b) are not accurate when a sender makes payment for the remittance transfer, a provider must give new disclosures before accepting payment.

The Bureau believes that extending the accuracy requirement to the optional disclosures regarding non-covered third party fees and taxes collected by persons other than the remittance transfer provider is necessary in order to communicate accurately to the sender how confident the remittance transfer provider is concerning the information provided. As discussed above, the Bureau believes that such information can be useful to senders under certain circumstances and hopes to encourage use of increasingly reliable information over time. Although the vast majority of remittance transfer providers may choose to disclose any numbers provided as estimates due to the various uncertainties with regard to foreign taxes and fees discussed above, the Bureau believes it is important to preserve remittance transfer providers' ability to compete based on disclosure of actual figures.

31(g) Foreign Language Disclosures

31(g)(1) General

Section 1005.31(g) of the 2012 Final Rule explains that disclosures required

by the rule must be provided in English and, in certain circumstances, in other languages as well. Similar to the changes discussed above regarding § 1005.31(a)(1) concerning clear and conspicuous disclosures, the Bureau is making conforming edits to § 1005.31(g)(1) to reflect the addition of the optional disclosures elsewhere in the 2013 Final Rule. While the disclosures are optional (see §§ 1005.31(b)(1)(viii) and 1005.33(h)(3)), the Bureau believes it is important that they conform to the 2013 foreign language disclosure requirements. Thus, the Bureau is amending § 1005.31(g)(1) to state that except as provided in § 1005.31(g)(2), disclosures required by this subpart or permitted by § 1005.31(b)(1)(viii) or § 1005.33(h)(3) must be made in English and, if applicable in accordance with § 1005.31(g)(1)(i) and (ii).

Section 1005.32 Estimates

Consistent with EFTA section 919, the 2012 Final Rule generally requires that disclosures provided to senders state the actual exchange rate, fees, and taxes that will apply to a remittance transfer and the actual amount that will be received by the designated recipient of a remittance transfer. Section 1005.32, as adopted in the 2012 Final Rule, includes only three specific exceptions to this requirement. First, consistent with EFTA section 919(a)(4), § 1005.32(a) of the 2012 Final Rule provides a temporary exception for certain transfers by insured institutions. Second, consistent with EFTA section 919(c), § 1005.32(b)(1) provides a permanent exception for transfers to certain countries. Third, the 2012 Final Rule also includes an exception under § 1005.32(b)(2) for transfers scheduled five or more business days before the date of the transfer. Thus, a remittance transfer provider is permitted to estimate exchange rates, fees, and taxes that are required by § 1005.31 to be disclosed to the extent permitted in § 1005.32(a) and (b). The December Proposal would have created additional exceptions to permit estimation with respect to certain recipient institution fees under proposed § 1005.32(b)(4) and national foreign taxes under proposed § 1005.32(b)(3). The proposed related commentary would have described the particular methods that could be used to estimate under these two methods. As discussed above, under § 1005.31(d), in both cases, the provider would have been required to disclose that the amount was estimated pursuant to § 1005.31(b)(1)(vi) and (vii).

Given that the 2013 Final Rule does not require the disclosure of non-covered third-party fees or taxes collected by a person other than the remittance transfer provider (see § 1005.31(b)(1)(vi)), the two proposed estimation methods are now unnecessary. As a result, the proposed changes to the 2012 Final Rule under § 1005.32(b)(3) and (4) are not being adopted nor is the Bureau adopting the related proposed changes to the commentary. *See* proposed comments 32(b)(3) and (4).

Instead, as described below, the Bureau is adopting a new § 1005.32(b)(3) to describe possible reasonable estimation methods that can be used where a remittance transfer provider elects to disclose non-covered third-party fees or taxes collected by a person other than the provider.

32(b)(3) Estimates for Non-Covered Third-Party Fees and Taxes Collected by a Person Other Than the Provider

As described above, the Bureau is eliminating the requirement to disclose certain recipient institution fees and taxes collected on the remittance transfer by a person other than the provider and to include such amounts in the amount received, required to be disclosed under § 1005.31(b)(1)(vii) and (b)(2)(i). Nevertheless, the Bureau believes that where the remittance transfer provider knows or can reasonably estimate any applicable non-covered third-party fee or tax collected on the remittance transfer by a person other than the provider and elects to disclose one or both of such amounts, senders are likely to benefit from more accurate and informative disclosures. Consequently, § 1005.31(b)(1)(viii) permits a provider to disclose any applicable non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider applicable to a remittance transfer in conjunction with the required disclaimers.

In order to encourage the optional disclosure of such information, § 1005.32(b)(3) of the 2013 Final Rule permits remittance transfer providers latitude to estimate any applicable non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider. Such estimates may be based on reasonable sources of information. The Bureau acknowledges that permitting providers to estimate such amounts may result in providers providing disclosures that may not reflect the actual charge by individual recipient institutions or the taxes levied upon such transfers. Nonetheless, the Bureau believes that permitting a reasonable approximation of the amount of non-covered third-party fees and taxes collected on the remittance transfer by persons other than the remittance transfer provider that could be assessed based on reasonable sources would provide senders valuable information about the amount to be received while also allowing the provider sufficient flexibility to disclose such information.

New comment 32(b)(3)–1 further notes that reasonable sources of information may include, for example: Information obtained from recent transfers to the same institution or the same country or region; fee schedules from the recipient institution; fee schedules from the recipient institution's competitors; surveys of recipient institution fees in the same country or region as the recipient institution; information provided or surveys of recipient institutions' regulators or taxing authorities; commercially or publicly available databases, services or sources; and information or resources developed by international nongovernmental organizations or intergovernmental organizations. The 2013 Final Rule also includes new model forms that provides examples of how such information may be integrated within the disclaimers of § 1005.31(b)(1)(viii). *See* Model Forms 30(b)–(d).

Additional Conforming Edits to § 1005.32

In addition, because of the changes made to the disclosure requirements under § 1005.31(b)(1)(vi), § 1005.32(b)(2)(ii) and (c)(3)(i) have been amended to conform with the requirements of § 1005.31(b)(1)(vi), as amended, which requires that a party disclose only covered third-party fees. Conforming changes have also been made to comments 32(a)(1)–1, (a)(1)–2.ii, 32(a)(1)–3.ii, and 32(b)(2)–1 so that these comments and related headings, as finalized, use the term ''covered third-party fees'' rather than ''other fees.''

In § 1005.32(c)(3)(ii), however, the Bureau notes that it has retained a reference to fees imposed by both the intermediary and the final recipient's institution. Although fees imposed by the recipient institution are generally non-covered third-party fees, under § 1005.30(h), certain recipient institution fees may qualify as covered third-party fees if they are imposed by an agent of the provider. *See* comment 30(h)–2.ii.

In addition to the conforming changes related to the disclosure of covered third-party fees pursuant to § 1005.31(b)(1)(vi), references to taxes collected on the remittance transfer by

a person other than the provider in § 1005.32(b)(2)(ii) and (c)(4) of the 2012 Final Rule have been deleted and § 1005.32(c)(5) has been renumbered as § 1005.32(c)(4). Several comments clarifying how to estimate these taxes have also been deleted, including comments 32(a)(1)–2.iii, 32(a)(1)–3.iii and 32(c)(4)–1.

Section 1005.33 Procedures for Resolving Errors

EFTA section 919(d) provides that remittance transfer providers shall investigate and resolve errors where a sender provides a notice of an error within 180 days of the promised date of delivery of a remittance transfer. The statute generally does not define what types of transfers and inquiries constitute errors, but rather gives the Bureau broad authority to set standards for remittance transfer providers with respect to error resolution relating to remittance transfers. The 2012 Final Rule implements such error resolution standards in § 1005.33.

Under § 1005.33, as adopted in the 2012 Final Rule, an error occurs in various situations including when the remittance transfer is not made available to a designated recipient by the date of availability stated in the disclosure provided by § 1005.31(b)(2) or (3) for the remittance transfer. Such an error may result from a sender's provision of an incorrect account or routing number to a remittance transfer provider. Industry expressed concern after the February Final Rule was published about the remedies available when a sender provides an incorrect account number to the provider. Providers have stated that in some cases, as a result of such errors, remittance transfers may be deposited into the wrong account and, despite reasonable efforts by the provider, cannot be recovered. Under § 1005.33(c)(2)(ii) of the 2012 Final Rule, a provider is obligated to resend to the designated recipient or refund to the sender the total amount of the remittance transfer regardless of whether it can recover the funds. Industry has noted that this problem is of particular concern with respect to transfers of large sums, particularly for smaller institutions that might have more difficulty bearing the loss of the entire transfer amount. In addition, providers have expressed concern that the remedy provisions of the 2012 Final Rule create a potential for fraud, despite an exception that excludes transfers with fraudulent intent from the definition of error. *See* § 1005.33(a)(1)(iv)(C).

In response to these concerns, in the December Proposal the Bureau proposed a new exception to the definition of error in § 1005.33. The exception set forth in proposed § 1005.33(a)(1)(iv)(D) would have excluded from the definition of error under § 1005.33(a)(1)(iv) the sender having given the remittance transfer provider an incorrect account number, provided the provider met certain specified conditions. The Bureau also proposed several other changes to the error resolution procedures in § 1005.33 to address questions of how remittance transfer providers should provide remedies to senders for errors that occurred because the sender provided incorrect or insufficient information.

Based on comments received, the Bureau is adopting the proposed exception and is further revising these procedures as detailed below. The Bureau is also adopting conforming changes to the error resolution procedures to reflect revisions to the disclosure requirements concerning non-covered third-party fees and taxes collected on a remittance transfer by a person other than the provider as well as making several technical, non-substantive changes.

33(a) Definition of Error

33(a)(1) Types of Transfers or Inquiries Covered

Section 1005.33(a)(1) lists the types of remittance transfers or inquiries that constitute ''errors'' under the 2012 Final Rule. The types of errors relevant to this final rule are discussed below.

33(a)(1)(iii) Incorrect Amount Received by the Designated Recipient

Section 1005.33(a)(1)(iii), as adopted in the 2012 Final Rule, defines as an error the failure to make available to a designated recipient the amount of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer. The commentary to § 1005.33(a)(1)(iii) explains that this category includes situations in which the designated recipient may receive an incorrect amount of currency. *See* comment 33(a)–2. Insofar as the Bureau is amending § 1005.31(b)(1)(vii) to exclude from the disclosed total to be received by the designated recipient non-covered third-party fees and taxes collected on a remittance transfer by a person other than the provider, the Bureau has adjusted the definition of error under § 1005.33(a)(1)(iii) to reflect that change. Thus, as adopted in the 2013 Final Rule, § 1005.33(a)(1)(iii) states that an error includes the failure to make available to a designated recipient the amount of currency disclosed pursuant to § 1005.31(b)(1)(vii) and stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer. Relatedly, the Bureau is adding a new exception, in § 1005.33(a)(1)(iii)(C), which states that no error under § 1005.33(a)(1)(iii) occurs if the difference results from the application of non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider and the provider provided the disclosure required by § 1005.31(b)(1)(viii). The Bureau is also making conforming edits to § 1005.33(a)(1)(iii)(A) and (B) to allow for the addition of § 1005.33(a)(1)(iii)(C).

The Bureau is also making conforming edits to the related commentary. In the 2013 Final Rule, the examples in comment 33(a)–3.ii are revised to reflect the changes discussed above regarding the disclosure of non-covered third-party fees and taxes collected on a remittance transfer by a person other than the provider. Comment 33(a)–3.ii, as revised, discusses as an example a situation in which the remittance transfer provider provides the sender a receipt stating an amount of currency that will be received by the designated recipient, which does not reflect the additional foreign taxes that will be collected in Colombia on the transfer but includes the disclaimer required by § 1005.31(b)(1)(viii). The comment explains that because the designated recipient will receive less than the amount of currency disclosed on the receipt due solely to the additional foreign taxes that the provider was not required to disclose, no error has occurred. Comment 33(a)–3.iii, as revised, addresses a situation where the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the receiving agent in Colombia on the transfer. Because the designated recipient in this example will receive less than the amount of currency disclosed in the receipt due to the additional covered third-party fees, an error under § 1005.33(a)(1)(iii) has occurred.

The Bureau is also adding new comment 33(a)–3.vi, which provides an example of a situation where a sender requests that his bank send US$120 to a designated recipient's account at an institution in a foreign country. The foreign institution is not an agent of the provider. Only US$100 is deposited into the designated recipient's account because the recipient institution imposed a US$20 incoming wire fee and deducted the fee from the amount deposited into the designated recipient's

account. Because this fee is a non-covered third-party fee that the remittance transfer provider is not required to disclose under § 1005.31(b)(1)(vi), no error has occurred if the provider provided the disclosure required by § 1005.31(b)(1)(viii).

Separately, in the December Proposal, the Bureau proposed to make technical corrections to comment 33(a)–4, which, as published in the **Federal Register** as part of the February Final Rule had improperly cited to § 1005.33(a)(1)(iv)(B) rather than to § 1005.33(a)(1)(iii)(B) and thus improperly described the relevant exception. The Bureau received no comments on this proposed correction, and it is adopted as proposed with a change to reflect the revisions discussed above to § 1005.31(b)(1)(vii).

33(a)(1)(iv) Failure To Make Funds Available by Date of Availability

33(a)(1)(iv)(D)

Section 1005.33(a)(1)(iv) of the 2012 Final Rule defines as an error a remittance transfer provider's failure to make funds available to the designated recipient by the date of availability stated on the receipt or combined disclosure, subject to three listed exceptions, including an exception for remittance transfers made with fraudulent intent by the sender or a person working in concert with the sender. *See* § 1005.33(a)(1)(iv)(C). Comment 33(a)–5 to the 2012 Final Rule elaborates on the definition of the term ''error'' under § 1005.33(a)(1)(iv) and explains that such errors under subpart B of Regulation E include, among other things, the late delivery of funds, the total non-delivery of a remittance transfer, and the delivery of funds to the wrong account. *See* comments 33(a)–5.1 and .ii. The commentary further notes that if only a portion of the funds are made available by the disclosed date of availability, then § 1005.33(a)(1)(iv) does not apply, but § 1005.33(a)(1)(iii) may apply instead.

As explained under comment 33(c)–2 in the 2012 Final Rule, an error under § 1005.33(a)(1)(iv) would include situations where a remittance transfer provider failed to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability because the sender provided an incorrect account number to the remittance transfer provider. After issuance of the 2012 Final Rule, the Bureau received comments from industry that providers often have no means to verify designated recipients' account numbers for remittance transfers into foreign bank accounts. As a result, providers could have to bear the potentially significant costs of their customers' mistakes in cases in which funds were deposited in the wrong account and could not be recovered as a result of the sender's provision of an incorrect account number.

In the December Proposal, the Bureau proposed to revise the definition of error in § 1005.33(a)(1)(iv) by adding a fourth, conditional exception. Proposed § 1005.33(a)(1)(iv)(D) would have excluded from the definition of error a failure to make funds available to the designated recipient by the disclosed date of availability, where such failure resulted from the sender having given the remittance transfer provider an incorrect account number, provided that the provider met the conditions set forth in proposed § 1005.33(h). These proposed conditions, would have required providers to notify senders of the risk that their funds could be lost, to investigate reported errors, and to attempt to recover the missing funds. In addition, the exception would have been limited to situations in which the funds were actually deposited into the wrong account. Where these conditions were met, the proposed exception would not have required providers to bear the cost of refunding or resending transfers.

The Bureau sought comment on the proposed exception generally and whether it should be limited to mistakes regarding account numbers or expanded to include other incorrect information provided by senders in connection with remittance transfers, such as routing numbers. Each of these is discussed below.

Exception for Senders' Mistakes Regarding Account Numbers

Industry commenters uniformly supported the addition of the proposed exception to the definition of error where the error was caused by the sender's provision of an incorrect account number. They put forth a number of reasons why they favored the proposed change. In many respects, these comments expanded upon those received prior to the December Proposal.

Industry commenters reiterated earlier concerns about the large potential exposure given their general inability of remittance transfer providers to validate the accuracy of a designated recipient's account number provided in connection with a wire transfers and similar types of open network transfers sent to accounts at banks and other institutions abroad. These commenters argued that providers sending these transfers over open networks generally have limited ability to cross-check account numbers with the names of accountholders prior to sending transfers because they often have no direct relationships with recipient institutions and thus no means of accessing those institutions' account information. Commenters further stated that as a result, the only way for a provider to validate such numbers may be to contact the recipient institution manually, which may be time-consuming and difficult due to language and time zone issues. Such validation would necessitate manual handling of remittance transfers and limit the ability of providers to use automated systems, which are less costly than manual handling of each transfer. Commenters stated their concern that manual validation could substantially increase costs to senders and delay the processing of remittance transfers. Relatedly, several commenters claimed that it was infeasible to expect providers to develop account number verification systems, automated or otherwise, before the effective date of the 2012 Final Rule (which was scheduled to take effect on February 7, 2013) due to the number of institutions worldwide that would need to adjust their systems used for transmitting wires.

Industry commenters also reiterated concerns expressed prior to the issuance of the December Proposal regarding the potential for fraud if a sender's provision of an incorrect account number is considered an error under § 1005.33(a)(1)(iv). As discussed in the December Proposal, commenters had stated that the 2012 Final Rule could enable fraudulent activity to flourish because, if unscrupulous senders provided incorrect account numbers and funds were sent to a coconspirator, remittance transfer providers might have to send transfer amounts again to another coconspirator without first recovering them. Commenters argued that the fraud exception in the 2012 Final Rule—§ 1005.33(a)(1)(iv)(C)—is insufficient because for providers to use the exception would be difficult in most circumstances. Many industry commenters stated that providers in the United States typically have a limited ability to gather evidence of fraud from a recipient institution abroad or to mandate cooperation from foreign institutions with whom they have no direct relationship. Industry commenters also noted that even if a provider suspected fraud, the lack of evidence would cause providers to hesitate to accuse one of its own customers of fraud. Industry

commenters also stated that the 2012 Final Rule departed from current industry practice by requiring that remittance transfer providers resend or refund a remittance transfer even when a sender's mistake results in mis-delivery of funds that cannot be recovered.

Many industry commenters expressed concern that in light of the significant exposure under the 2012 Final Rule's sender error provisions, if the Bureau did not revise the error resolution procedures as it proposed to do in the December Proposal, many remittance transfer providers would curtail their remittance transfer offerings such as by limiting the amount permitted per transfer, limiting transfers to certain trusted customers, or by exiting the remittance transfer business altogether.

Industry commenters also argued that the Bureau should not have adopted the approach taken in the 2012 Final Rule to sender error because it was not mandated by statute. One of these commenters opined that because the Dodd-Frank Act was not specific with respect to who must bear the cost of a mis-directed remittance transfer, the Bureau's legal authority to require remittance transfer providers to bear the cost of mistakes made by senders was questionable.

In contrast to comments from industry, consumer group commenters were divided on whether the Bureau should adopt the proposed exception for certain sender errors. Two consumer groups supported the proposed change because, they contended, the proposed rule achieved the appropriate allocation of risk between senders and remittance transfer providers and incentivized providers to minimize the occurrence of errors. These commenters also stated that it would be difficult for providers, particularly small providers, to retrieve funds sent to the wrong account. They further asserted that it would be difficult for providers, and particularly credit unions, to accuse their customers or members of fraud in order to avail themselves of the fraud exception in § 1005.33(a)(1)(iv)(C). As a result, these consumer group commenters argued that absent the proposed revision, many providers might choose to exit the remittance transfer business altogether, resulting in a loss of access to senders.

Other consumer groups opposed the proposed changes and urged the Bureau not to amend the 2012 Final Rule with respect to sender mistakes regarding account numbers that result in the loss of the transfer amount. First, some of these groups argued that the Bureau would be undermining the intent of Congress, which, they argued, was to motivate industry to change existing practices to develop more secure means of sending remittance transfers. By adopting the proposed exception, these commenters argued, the Bureau would eliminate any incentive for remittance transfer providers to develop enhanced security procedures. Relatedly, some consumer groups also argued that the existing definition of error in subpart A of Regulation E, specifically § 1005.11(a)(ii), already addresses the situation in which a consumer provides an incorrect recipient account number by creating an error for ''incorrect'' electronic fund transfers.[8] These commenters noted that insofar as § 1005.11(a)(ii) is phrased in general terms and refers to an ''incorrect electronic fund transfer'' by its plain language it does not exclude incorrect information provided by a consumer (or any other party). Insofar as § 1005.11(a)(ii) has long applied to a portion of remittance transfers, the commenters contended that had Congress intended to deny the protections of this provision to consumers, it would have done so more explicitly.

Finally, some consumer group commenters suggested that the Bureau should not adopt the proposed exception to the definition of error, even if the 2012 Final Rule would result in some remittance transfer providers exiting the market because they are unable to implement adequate verification procedures today. Alternatively, these commenters suggested that, in order to reduce the risk of market exit, that the Bureau could adopt the proposed revisions, but limit the proposed exception to the definition of error to transfers over a certain dollar amount so that senders of smaller transfers would still benefit from the error provisions in the 2012 Final Rule.

Upon consideration of these comments and further consideration and to facilitate compliance, the Bureau is finalizing § 1005.33(a)(1)(iv)(D) with several changes from the proposed provision, which are discussed below. As in the December Proposal, the exception as finalized will only apply if a remittance transfer provider can meet certain conditions including warnings to senders and use of reasonable validation methods where available. These conditions are set forth in § 1005.33(h) and also are discussed in detail below. Where the exception applies, providers will not be required to bear the cost of refunding or resending transfers if funds ultimately cannot be recovered.

As it noted in the December Proposal, the Bureau believes that this exception appropriately allocates risk based on remittance transfer providers' existing methods for sending transfers, which often do not allow for or facilitate verification of designated recipients' account numbers. The Bureau continues to believe it is important for industry to develop improved security procedures and expects to engage in a dialogue with industry about how to encourage the growth of improved controls and communication mechanisms. But the Bureau understands that industry is unlikely to be reasonably able to implement such changes in the near future. Subpart B of Regulation E does not regulate most recipient institutions, and the Bureau has concluded that individual providers, and particularly those sending transfers through open networks have limited ability to influence the practices of financial institutions worldwide in the short term.

Absent such changes, the Bureau is concerned that remittance transfer providers will exit the market or reduce remittance offerings rather than risk having to bear the cost of the entire transfer amount where funds are deposited into the wrong account due to the sender's provision of an incorrect account number. The Bureau believes such an interim disruption would not be in consumers' best interests, and thus has finalized the proposed exception as discussed below. The Bureau, however, will continue to evaluate the development of procedures as it monitors providers' implementation of and compliance with the 2013 Final Rule.

The Bureau disagrees with those consumer group commenters that the 2012 Final Rule should be allowed to take effect absent the proposed exception for sender account number mistakes, and that the Bureau should instead monitor whether the concerns summarized in the December Proposal—such as increased fraud and remittance transfer providers exiting the market—actually materialize. As stated above and in the December Proposal, the Bureau is concerned that absent the proposed change, some providers would severely curtail their offerings or withdraw from the remittance transfer business altogether, and such a market change could have a negative impact on senders. The Bureau also does not believe, as commenters suggested, that it

[8] Section 1005.11 of subpart A of Regulation E contains error resolution provisions for electronic fund transfers. Section 1005.11(a)(ii) states that a potential error under the rule is an ''incorrect electronic fund transfer to or from the consumer's account.''

is appropriate to limit the scope of the exception to larger value transfers, because doing so could potentially encourage providers to limit senders' access to smaller value transfers. In addition, the Bureau does not believe it appropriate to engage in line drawing or to provide differential protections in this circumstance. Furthermore, the Bureau disagrees that the proposed exception would harm senders in that the exception in many ways maintains the status quo insofar as the Bureau believes that, today, senders typically bear the loss when their mistake leads to a mis-deposit. Nor does the Bureau believe that the problem of senders losing the transfer amount is particularly widespread today; insofar as the status quo is maintained, the Bureau does not expect this to change. The Bureau's outreach confirmed that in most cases where there is a problem in the transmission of a remittance transfer, the provider is able to retrieve the funds or have them routed properly.

With regard to commenters' arguments about the Bureau's statutory authority, the Bureau disagrees both with industry participant and consumer group arguments that the EFTA or section 1073 of the Dodd-Frank Act specifies which party must bear the cost of a sender's mistake with respect to remittance transfer. Rather, EFTA section 919 gives the Bureau broad discretion to set standards for remittance transfer providers with respect to error resolution, including to define errors, and does not mandate a specific result with regard to which party should bear the risk of loss under any particular circumstances. Nor does the Bureau believe that the definition of error in subpart A of Regulation E, which does not apply to all remittance transfers, precludes the Bureau from adopting more specifically tailored error resolutions, and corresponding definitions, applicable to all remittance transfers under subpart B of Regulation E. *See also* § 1005.33(f). Accordingly, the Bureau has adopted the proposed exception for sender account number mistakes subject to specific conditions discussed below.

The Scope of the Sender Error Exception

As noted above the Bureau also sought comment on the scope of the proposed exception to the definition of error under § 1005.33(a)(1)(iv) and whether it should apply to incorrect information provided by senders in addition to designated recipients' account numbers and, in particular, whether the proposed exception should apply in cases in which senders make mistakes regarding routing numbers or similar institution identifiers in addition to mistakes regarding account numbers.

In response, many industry commenters suggested that the proposed exception be expanded to refer to sender mistakes regarding any information provided by a sender in connection with a remittance transfer rather than just mistaken account numbers, as proposed. Other commenters listed specific types of incorrect information that should be addressed by the exception to § 1005.33(a)(1)(iv), such as: Routing numbers, Business Identifier Codes (BICs), Society for Worldwide Interbank Financial Telecommunication codes (SWIFT codes), International Bank Account Numbers (IBANs), local bank codes, prepaid, debit or credit card account numbers, recipient institutions' names, designated recipients' names, escrow account numbers, currencies in which transfers will be received, incomplete wire instructions, and recipients' email addresses, phone numbers, and addresses. Commenters offered different reasons as to why the proposed exception should be expanded to include sender mistakes regarding each suggested type of information. In addition to considering these comments, the Bureau conducted additional outreach to understand the nature of errors related to the suggested types of information and why remittance transfer providers thought they should be included in any exception to an error under § 1005.33(a)(1)(iv) in the 2012 Final Rule.

Many of the industry commenters that urged that the proposed exception should be extended to all mistakes made by senders argued, as noted above, that there is no statutory basis to make remittance transfer providers bear the cost of all senders' mistakes. Relatedly, one commenter argued that no other consumer finance statute protects consumers from their own errors and that there is a distinction between allocating risk to a provider for mistakes by third parties, or where fault cannot be determined, and requiring providers to bear the cost of senders' mistakes.

As for the specific types of information provided by senders, nearly all industry commenters and some consumer group commenters favored expanding the proposed exception to apply to sender mistakes regarding routing numbers and other recipient institution identifiers. Commenters explained that for many remittance transfers into accounts, remittance transfer providers request, in addition to the number of the designated recipient's account, an alphanumeric identifier of the recipient institution, similar to the routing numbers used to identify depository institutions in the United States.[9] Providers, and any other intermediaries involved in the transfer, then use this identifier to determine the institution to which the transfer should be sent. Commenters further explained that, in many cases, a sender's mistake regarding the identifier of a bank could pose a similar problem for a provider as an incorrect account number. The commenters stated that, like account numbers, many providers lack the ability to verify the accuracy of alphanumerical identifiers related to recipient institutions that are provided by senders. If a recipient institution identifier is incorrect and the provider does not match it with an institution name, funds could conceivably be mis-deposited if the institution represented by the incorrect routing number has an account matching the number provided by the sender.

In addition to sender mistakes regarding account numbers and recipient institution identifiers, several commenters asked that the Bureau exclude from the definition of error under § 1005.33(a)(1)(iv) senders' mistakes regarding correspondent routing instructions (*i.e.,* if the sender suggests that the remittance transfer provider send the transfer through a particular correspondent that is unable to complete the transfer). Several commenters stated that generally this sort of mistake generally would lead to a delay of a transfer and not its mis-deposit into the wrong account.

Finally, several industry commenters argued that the proposed exception should be expanded to apply to senders' mistakes regarding designated recipients' names and information that the designated recipient themselves might need to apply the proceeds of remittance transfers after receipt. For example, a trade association commenter asked that the Bureau expand the proposed exception to include sender mistakes about additional information a designated recipient needs to process a transfer it receives. The commenter stated that if, for example, the designated recipient is an insurer, it might need the designated recipient's policy number to process the funds received. Similarly, one commenter stated that if a designated recipient is a property lessor, the lessor might need an identifying apartment number in order

[9] For example, in order to route a wire transfer to a foreign bank, a bank in the United States may require that the sender provide the name of the designated recipient and the recipient's institution as well as the BIC for the recipient's institution, and the recipient's account number.

to process a transfer that is a rent payment.

After careful consideration of the comments received and upon further consideration, the Bureau is expanding the exception to the definition of error in § 1005.33(a)(1)(iv)(D) to include situations where a sender has provided an incorrect recipient institution identifier in addition to situations where a sender provides an incorrect account number, as long as the error results in a mis-deposit of the funds and that the remittance transfer provider meets the conditions set forth in § 1005.33(h). As discussed below, the 2013 Final Rule includes as one such condition, that the provider use reasonably available means to verify the recipient institution identifier provided by the sender. *See* § 1005.33(h)(2).

Based on its monitoring of the remittance market, review of comment letters, and other outreach, the Bureau believes that situations in which an incorrect recipient institution identifier could result in a transfer being deposited into the wrong account are exceedingly rare but not unheard of. More typically, the Bureau understands, a mistaken identifier will result in a transfer that is returned to the remittance transfer provider because either the identifier does not match any institution or the account number does not match an account at the institution to which the transfer is mistakenly directed. Nevertheless, the Bureau is expanding the exception in the 2013 Final Rule beyond what was proposed because, upon further consideration, it believes that it is appropriate to treat mistakes in recipient institution identifiers similarly to mistakes in account numbers. The two types of identifiers are similar in purpose and, in some cases, are combined into one. In addition, these identifiers may not be easily verifiable by providers sending remittance transfers over an open network and are used in straight-through, automated processing of transfers. Additionally, although less likely than as with respect to account numbers, under the 2012 Final Rule an unscrupulous sender could potentially provide an incorrect routing number to perpetrate a fraud with a coconspirator abroad.

Contrary to requests by commenters that the Bureau extend the proposed exception for sender mistakes regarding account numbers to mistakes regarding all types of information, the Bureau is limiting the exception in § 1005.33(a)(1)(iv)(D) to sender mistakes regarding account numbers and recipient institution identifiers because it does not believe it is appropriate to extend the exception to all mistakes a sender might make in connection with a remittance transfer for several reasons. While the chance of mis-deposit is limited for all sender mistakes, the Bureau believes there is a greater risk for mistakes regarding account numbers and recipient institution identifiers. However, for most other types of sender mistakes identified by commenters, such as mistakes regarding the recipient's address or wire instructions, the Bureau does not believe that the incorrect information would usually result in a mis-deposit of a remittance transfer. Instead, the Bureau believes that these mistakes will at most result in a delay of delivery or in non-delivery of the remittance transfer. In situations where the recipient institution identifies a customer with the same name as the designated recipient but is unable to match that customer's name to the provided account number, the Bureau believes that the recipient institution will generally be unable to apply the funds and that the transfer will be returned or otherwise delayed but that the funds will not be mis-deposited.

The Bureau does not believe that it is warranted to extend the exception to those sender mistakes that are likely to result only in either a delay or a return of the transfer to the remittance transfer provider, and not the loss of funds, because the cost to the provider of delay or non-delivery differs markedly from the cost of lost transfers. Under the 2012 Final Rule, when a transfer is delayed or returned to the provider, the provider must refund its fee to the sender. *See* § 1005.33(c)(2)(ii). Additionally, when the transfer is returned to the provider, the sender can request that the transfer be resent at no charge (although third-party fees may be imposed on the resend) or have the transfer amount refunded. *See* § 1005.33(c)(2)(ii). The cost to the provider in these circumstances differs markedly from the cost to the provider under the 2012 Final Rule for a transfer that is mis-deposited into the wrong account and cannot be retrieved. When a mis-deposit occurs, absent an exception, the provider may have to resend or refund the entire transfer amount if the transfer could not be retrieved from the wrong account rather than merely refund its fee or send a transfer at no cost. *See* § 1005.33(c)(2)(ii) and comment 33(c)–2 in the 2012 Final Rule. Thus, for mis-deposited transfers, the fact that the provider is potentially at risk of having to absorb a loss of principal is far higher than for other types of errors and thus is far more likely to lead to a significant curtailment of services. Furthermore, the Bureau believes that, in many respects, the remedy under the 2012 Final Rule for non-delivery is similar to many providers' existing practices in that they now resend funds at no charge with the corrected information. Therefore, to maintain as an error sender mistakes that merely result in delay or non-delivery of the remittance transfer as part of this final rule would not require a significant adjustment for those providers. Finally, the 2012 Final Rule already allows providers a mechanism to manage uncertainty regarding the date of delivery of funds. *See* § 1005.31(b)(2)(ii) and comment 32(b)(2)–1 (interpreting § 1005.31(b)(2)(ii) to allow a provider to disclose the ''latest date on which funds will be available'').

Several industry commenters suggested that the Bureau should make senders, rather than providers, bear the costs of their own mistakes because no other consumer protection regimes makes the regulated entities bear the costs of consumers' mistakes. The Bureau does not think it is necessary or appropriate that the remittances rules' remedy provisions match perfectly those in other consumer protection regimes, given the unique statutory structure and nature of the transactions at issue. The Bureau is maintaining the 2012 Final Rule's error provisions regarding sender mistakes other than those covered by the exception in § 1005.33(a)(1)(iv)(D), because it believes providers are generally in the best position to institute systems to limit their occurrence and to work with other industry participants to resolve particular mistakes in transmissions.

With respect to those mistakes that are likely to result only in a delay or non-delivery of a remittance transfer (*e.g.,* mistakes other than those regarding account number or the recipient institution identifier), the Bureau believes that retaining the current rule, which does not include an exception for such mistakes, strikes the appropriate balance been protecting senders and encouraging providers to limit the incidence of such errors without exposing providers to the risk of loss of the transfer amount. With respect to those sender mistakes that make it impossible for the recipient (as opposed to the recipient institution) to know how to use the funds received (*e.g.,* an apartment number to apply a rent payment), the Bureau does not believe that such mistakes would give rise to an error under § 1005.33(a)(1)(iv). This is true because the 2013 Final Rule only does not define as an error the inability of the designated recipient to

timely apply the funds for a particular purpose once a transfer is received.

The Bureau also does not believe that a sender's provision of an incorrect name would result in an error under the 2013 Final Rule, and thus a sender's provision of an incorrect name need not be included in the exception from the term error under § 1005.33(a)(1)(iv)(D). As defined under § 1005.30(c), a designated recipient is ''any person specified by the sender as the authorized recipient of a remittance transfer to be received at a foreign country.'' As noted above, comment 30(c)–1 in the 2012 Final Rule stated that a designated recipient can be either a natural person or an organization, such as a corporation. The Bureau is further clarifying this comment in the 2013 Final Rule to explain that the designated recipient is identified by the name of the person provided by the sender to the remittance transfer provider and disclosed by the provider to the sender pursuant to § 1005.31(b)(1)(iii). *See* comment 30(c)–1. Thus, assume for example that a sender tells a remittance transfer provider to send a transfer to ''Jane Doe'' at a foreign bank, the provider discloses ''Jane Doe'' pursuant to § 1005.31(b)(2)(iii), and the transfer is timely deposited by that bank into Jane Doe's account. If the sender later asserts that an error occurred because the sender in fact intended the transfer to be sent to ''John Doe'' but had not communicated that to the provider, no error has occurred under the final rule because ''Jane Doe'' was the name of the designated recipient stated on the receipt provided to the sender.

In some cases, however, a sender's name can result in an error. If, for example, the recipient institution could not deliver the remittance transfer described above because no one named ''Jane Doe'' had an account at the recipient institution, or more than one person named ''Jane Doe'' had an account at that institution such that the funds could not be applied, the transfer would be delayed or rejected resulting in an error because the sender provided incorrect or insufficient information. Insofar as this would not lead to the deposit of the transfer in the wrong account, the Bureau is not inclined to include these mistakes in the exception.

Commenters also urged the Bureau to include in the exception to § 1005.33(a)(1)(iv) to mistakes regarding mobile phone numbers, email addresses, and debit, credit and prepaid card numbers, arguing that these additional categories of identifiers warrant the same treatment as those covered by proposed § 1005.33(a)(1)(iv)(D). Commenters supporting expansion of the exception to include these identifiers generally put forth the same reasons as those discussed above regarding account numbers and recipient institution identifiers. These commenters generally did not address the practical differences between transfers sent between bank accounts and those sent to other types of accounts.

The Bureau does not think it appropriate to extend the exception to § 1005.33(a)(1)(iv)(D) to these sorts of identifiers for several reasons. First, § 1005.31(b)(2)(iii) requires that a remittance transfer provider disclose the name of the designated recipient to the sender and comment 30(c)–1 now clarifies that the designated recipient is identified by the name of the person stated on the disclosure provided pursuant to § 1005.31(b)(1)(iii) regardless of what other identifying information that the sender may also have provided to the provider. Insofar as a provider must disclose the name of the designated recipient on the receipt provided to the sender, the provider is not permitted to process a remittance transfer under the 2013 Final Rule by only disclosing a non-name identifier, such as a card number, email address, or mobile number. To the extent providers currently send transfers without disclosing a name to the sender, they will not be able to continue doing so once the 2013 Final Rule takes effect.

Second, the Bureau believes that in the current market, only a small number of providers send remittance transfers to designated recipients who are identified by mobile phone numbers, email addresses, and debit, credit and prepaid card numbers. These providers are often conducting transfers between two of their own customers through a closed network, and thus are in position to verify designated recipients' identities. In other words, for transfers conducted through these closed-networks, both the sender and recipient will have agreed to sign on to the provider's network in order to send or receive funds. The Bureau understands that, today, a number of the providers using these identifiers may not verify that the identifier matches the name of the designated recipient in every instance. However, the Bureau believes that unlike providers using account numbers to identify designated recipients in transfers through the open network system, these providers have a reasonable ability to implement security measures in order to limit the possibility that senders make mistakes regarding designated recipients' mobile phone numbers, email addresses, and debit, credit and prepaid card numbers. These measures might include confirmation codes, test transactions, or other methods to prevent transfers from being sent to the wrong person.

Third, the Bureau believes that the systems are still limited and nascent for transfers in which the mobile phone numbers, email addresses, and debit, credit and prepaid card numbers are used to identify designated recipients and the transfer is not sent entirely over the remittance transfer provider's own network. As these systems grow, the Bureau expects that providers can proactively design systems in such a way as to allow for the development of better verification protocols. If, in the future, providers intend to develop new systems to allow transfers using only names and mobile phone numbers to identify designated recipients, for example, the Bureau believes that such systems should be designed to verify that the provided names and numbers match before recipients can receive transfers. The Bureau does not believe that such methods can be implemented for most transfers sent to bank accounts. As described above, such transfers are generally sent as wire transfers, through an open network system.

As noted, the Bureau has limited the exception in § 1005.33(a)(1)(iv)(D) to account numbers and recipient institution identifiers in order to encourage the growth of improved controls and communication mechanisms that may generally limit the possibility of other errors in the transmission of remittance transfers. Furthermore, the Bureau intends to monitor closely industry's ability to verify account numbers and recipient institution identifiers and will consider modifying this exception if it thinks such verification methods become reasonably available and are able to prevent most errors from occurring.

Comment 33(a)–7

In the December Proposal, the Bureau proposed comment 33(a)–7 to explain further when the proposed exception in § 1005.33(a)(1)(iv)(D) would apply. The Bureau received no comments on this proposed comment and it is adopted with minor clarifying changes in light of the conditions in § 1005.33(h) in the 2013 Final Rule, which are discussed further below. Comment 33(a)–7 in the 2013 Final Rule now states that the exception in § 1005.33(a)(1)(iv)(D) applies where a sender gives the remittance transfer provider an incorrect account number or recipient institution identifier and all five conditions in § 1005.33(h) are satisfied. The exception does not apply, however, where the

failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information provided by the sender other than an incorrect account number or recipient institution identifier, such as an incorrect name of the recipient institution.

Comments 33(a)–8 and 33(a)–9

To clarify what the Bureau means by account number and recipient institution identifier, the Bureau is also adopting new comment 33(a)–8. Comment 33(a)–8 states that, for purposes of the exception in § 1005.33(a)(1)(iv)(D), the terms account number and recipient institution identifier refer to alphanumerical account or institution identifiers other than names or addresses, such as account numbers, routing numbers, Canadian transit numbers, ISO 9362 or 13616 codes (including International Bank Account Numbers (IBANs) and Business Identifier Codes (BICs)) and other similar account or institution identifiers. In addition, for purposes of this exception, the term designated recipient's account refers only to an account held in the recipient's name at a bank, credit union, or equivalent institution that maintains savings or checking accounts or accounts used for the purchase or sale of securities. An account for purposes of this definition is not limited to accounts held by consumers. For the reasons discussed above, the comment states that the term does not, however, refer to a credit card, prepaid card, or a virtual account held by an Internet-based or mobile phone company that is not a bank, credit union, or equivalent institution.

The Bureau proposed to renumber comment 33(a)–7 in the 2012 Final Rule as comment 33)(a)–8. Due to the addition of both comments 33(a)–7 and –8 in the 2013 Final Rule, this comment will be renumbered as comment 33(a)–9 but is otherwise unchanged from the 2012 Final Rule.

33(a)(2) Types of Inquiries and Transfers Not Covered

Section 1005.33(a)(2) and the accompanying commentary address circumstances that do not constitute errors under the 2012 Final Rule. Section 1005.33(a)(2)(iv) provides that an error does not include a change in the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3), if the remittance transfer provider relied on information provided by the sender as permitted by the commentary accompanying § 1005.31 in making such disclosure. Comment 33(a)–8 of the 2012 Final Rule provides two illustrative examples.

The December Proposal would have made revisions to § 1005.33(a)(2)(iv) in accordance with the proposed revisions to §§ 1005.31(b)(1)(vi) and (vii) and the accompanying commentary to make clear that an error does not include a change in the amount of currency received by the designated recipient from the amount disclosed because the remittance transfer provider did not disclose foreign taxes other than those imposed by a central government. This proposed change would have been consistent with the proposed elimination of the requirement to disclose subnational taxes pursuant to proposed § 1005.31(b)(1)(vi). Insofar as the Bureau is not adopting this part of the proposal these proposed changes to § 1005.33(a)(1)(iii) are not being adopted in the 2013 Final Rule.

The Bureau also proposed revisions to renumber and revise comment 33(a)–8 in the 2012 Final Rule in light of the revisions proposed to § 1005.31(b)(1)(vi) and (vii) to explain that a remittance transfer provider need not disclose regional, provincial, state or other local foreign taxes. Proposed comment 33(a)–9 would have revised the comment to explain that a provider need not disclose regional, provincial, state or other local foreign taxes. The proposed revisions also would have made clear that where, under the proposal, a provider was permitted to rely on a sender's representations, no error would have occurred. As proposed, comment 33(a)–9 would additionally have explained that any discrepancy between the amount disclosed and the actual amount received resulting from the provider's reliance upon the proposed provision that would not have required the disclosure of subnational taxes would not constitute an error under § 1005.33(a)(2)(iv). Insofar as the Bureau is not adopting the proposed changes regarding subnational taxes, the proposed revisions to the comment are no longer relevant and are not being adopted. The Bureau is, however, removing language from comment 33(a)–8 that referred to a provider's reliance on the sender's representations regarding variables that affect the amount of taxes imposed by a person other than the provider because such taxes are no longer required to be disclosed. The comment is finalized as comment 33(a)–10. In the 2013 Final Rule comment 33(a)–10 states that under the commentary accompanying § 1005.31, the remittance transfer provider may rely on the sender's representations in making certain disclosures. *See, e.g.,* comments 31(b)(1)(iv)–1 and 31(b)(1)(vi)–1. For example, suppose a sender requests U.S. dollars to be deposited into an account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient's account is actually denominated in local currency and the recipient account-holding institution must convert the remittance transfer into local currency in order to deposit the funds and complete the transfer, the change in currency does not constitute an error pursuant to § 1005.33(a)(2)(iv).

33(c) Time Limits and Extent of Investigation

33(c)(2) Remedies

Section 1005.33(c)(2) of the 2012 Final Rule implements EFTA section 919(d)(1)(B) and establishes procedures and remedies for correcting an error under the rule. In particular, where there has been an error under § 1005.33(a)(1)(iv) for failure to make funds available to a designated recipient by the disclosed date of availability, § 1005.33(c)(2)(ii) of the 2012 Final Rule permits a sender to choose either to: (1) Obtain a refund of the amount tendered in connection with the remittance that was not properly transmitted, or an amount appropriate to resolve the error; or (2) have the remittance transfer provider resend to the designated recipient the amount appropriate to resolve the error, at no additional cost to the sender or designated recipient. *See* § 1005.33(c)(2)(ii)(A). However, if the error resulted from the sender having provided incorrect or insufficient information, § 1005.33(c)(2)(ii)(A)(*2*) permits third-party fees to be imposed for resending the remittance transfer with the corrected information although the provider may not charge its own fee again. In addition, comment 33(c)–2 explains that § 1005.33(c)(2) requires a remittance transfer provider to resend a transfer at the exchange rate it is using on the date of resend if funds were not already exchanged in the first unsuccessful remittance transfer attempt. Comment 33(c)–2 in the 2012 Final Rule also explains that the provider was required to disclose this new exchange rate to senders in accordance with § 1005.31.

The December Proposal would have allowed for additional flexibility in providing the required disclosures when funds are resent following errors that occurred because the sender provided incorrect or insufficient information. The December Proposal was intended to address concerns expressed by industry participants that the approach taken in

the 2012 Final Rule created certain operational tensions between the timing and accuracy provisions in § 1005.31(e) and (f), as referenced in comments 33(c)–2, 33(c)–3, and 33(c)–4, which together did not allow a remittance transfer provider to resend a transfer in some circumstances without contacting the sender because the sender either previously requested that the transfer be resent or the provider is employing its default remedy, which is to resend the transfer.

To reduce this tension, the December Proposal would have created a new § 1005.33(c)(3), revised comment 33(c)–2 and added a new comment 33(c)–11. Proposed § 1005.33(c)(3) would have provided new remedy procedures for errors that occurred pursuant to § 1005.33(a)(1)(iv) where a sender provides incorrect or insufficient information. These proposed procedures would have allowed remittance transfer providers to provide oral, streamlined disclosures. The proposed commentary would have made clear that providers need not treat resends of remittance transfers as entirely new remittance transfers. Under proposed § 1005.33(c)(3)(i), a provider would have been able to set a future date of transfer and to disclose an estimated exchange rate pursuant to § 1005.32(b)(2) if the provider did not make direct contact with the sender. If a provider had disclosed an estimated exchange rate under proposed § 1005.33(c)(3)(i), the rule would have required the sender to disclose the cancellation period pursuant to § 1005.36(c), as well as the date the provider will complete the resend, using the term ''Transfer Date'' or a substantially similar term. A sender would have been allowed to cancel the resend up to three business days before the date of transfer. In the alternative, proposed § 1005.33(c)(3)(ii) would have required a provider that made direct contact with the sender to disclose and apply the exchange rate used for remittance transfers on the date of resend, rather than providing an estimate.

Under § 1005.33(c)(2)(ii)(A)(*2*) of the 2012 Final Rule, a remittance transfer provider could impose third-party fees, but not include taxes, for resending the remittance transfer when an error occurred because the sender provided incorrect or insufficient information. Separately, the 2012 Final Rule did not state expressly whether a provider should be permitted to deduct third-party fees imposed or taxes collected on a remittance transfer when a transfer is returned from an institution abroad, following a failed delivery, to the provider before being resent or refunded. In the December Proposal, the Bureau also sought comment on whether the provider should be permitted to impose taxes incurred when resending funds or, more generally, whether other remedies were appropriate with respect to fees and taxes.

With respect to the appropriate remedy for errors that occurred because a sender provided incorrect or insufficient information, industry commenters generally stated that they appreciated the Bureau's attempt to revise the resend procedures in the 2012 Final Rule. However, those who commented on this issue stated that the Bureau's proposed approach was too complicated because proposed § 1005.33(c)(3) required disclosures with distinct content, timing and accuracy requirements that did not necessarily apply to other disclosures required by the 2012 Final Rule, particularly if the provider was not otherwise providing the disclosures unique to transfer scheduled before the date of transfer. *See* § 1005.36(a). As a result, these commenters contended that the new requirements would necessitate the development of additional disclosures, systems changes, and additional employee training. Commenters asserted that proposed § 1005.33(c)(3) would be difficult, costly, and time-consuming to implement and that they had concerns about the compliance costs and operation challenges posed by this part of the December Proposal. Instead, several industry trade association commenters suggested an alternative approach, under which a remittance transfer provider would provide notice that the sender provided incorrect or insufficient information in connection with a remittance transfer, that funds had been credited (at the current exchange rate) to the sender's account, and that the sender should notify the provider if the sender wished to initiate a new remittance transfer. Commenters argued that this approach would simplify the remedy in situations where an error occurs due a sender's mistake.

Commenters further suggested that the Bureau should not allow a sender to designate a resend remedy prior to the remittance transfer provider's investigation of the error, permitted under § 1005.33(c)(2) as explained by comment 33(c)–2. Instead, regardless of the sender's prior remedy election, the commenters advocated requiring the sender to elect affirmatively to resend funds after the provider completed its investigation and the sender received notice of that investigation and the related refund.

As for the amount appropriate to refund or resend, industry commenters generally urged the Bureau to revise the 2012 Final Rule so that remittance transfer providers are permitted to deduct from the amount refunded or resent the fees imposed or taxes collected on the first unsuccessful transfer by a party other than the provider both when the transfer was initially sent and when it was returned to the provider. These commenters contended that it was unfair that providers would also have to refund to senders any amounts actually deducted from the transfer amount when a mis-delivered transfer is returned to the provider (*i.e.,* lifting fees and taxes deducted from the transfer amount in the process of returning the funds to the provider in the United States after the failed delivery of the initial transaction).

Based on comments received and upon further consideration, the Bureau adopts new § 1005.33(c)(2)(iii), which states that in the case of an error under § 1005.33(a)(1)(iv) that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall refund to the sender the amount of funds provided by the sender in connection with the remittance transfer that was not properly transmitted, or the amount appropriate to resolve the error, within three business days of providing the report required by § 1005.33(c)(1) or (d)(1) except that the provider may agree to the sender's request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund. The provider may deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempt.

The Bureau is adopting this approach because it has concluded that for the small number of transactions to which these provisions would likely apply, the Bureau's proposed alternative to the 2012 Final Rule's approach could be complicated for remittance transfer providers to implement. The Bureau is adopting the revised provision in § 1005.33(c)(2)(iii) rather than in § 1005.33(c)(3), as originally proposed, because the Bureau believes it more appropriate to put all remedies for errors arising under § 1005.33(a)(1)(iv) under subsection § 1005.33(c)(2). Accordingly, the Bureau is revising §§ 1005.33(c)(2) and (c)(2)(ii) to make

clear that these provisions only apply when an error did not occur because the sender provided incorrect or insufficient information. Similarly, the Bureau is also revising §§ 1005.33(c)(2)(A)(*2*) and (c)(2)(B) to remove references to situations in which an error occurred because the sender provided incorrect or insufficient information. The provision that was § 1005.33(c)(2)(iii) in the 2012 Final Rule is finalized as § 1005.33(c)(2)(iv) with no substantive changes.

Specifically, the Bureau is adopting this new approach because of the challenges associated with both resending a transfer at a new exchange rate and timely disclosing such rate to the sender. The Bureau is convinced by commenters' assertions that the Bureau's attempts to make disclosures more streamlined and reduce the number of paper disclosures provided could potentially increase the cost of compliance for remittance transfer providers, by necessitating changes in disclosures and procedures. Furthermore, the Bureau believes that the new § 1005.33(c)(2)(iii) will preserve the 2012 Final Rule's protections for senders in event of a resend that follows an error that occurred due to a sender's mistake.

Although commenters suggested that an alternative where funds could be credited instantly to a sender's account, not all remittance transfers are made from an account. In some cases, a sender may not receive notice immediately or the sender would have to wait to resend funds until receiving the refund check. *See* comment 33(c)–6. As adopted, under § 1005.33(c)(2)(iii) in the 2013 Final Rule, in situations where a sender wants to resend the transfer, the sender would have to make a request to the remittance transfer provider after receipt of the error investigation report and the provider would treat the remittance transfer as a new remittance transfer request subject to the same disclosures and other procedures as any other new transfer requested. The transaction would be subject to applicable fees and taxes and processed at the exchange rate in effect at the time the sender authorizes the new transfer.

Additionally, the Bureau agrees with commenters that it is not appropriate, in situations where funds are returned because of a sender's mistake, for the remittance transfer provider to have to bear the cost of fees imposed by third parties and taxes that have been collected in connection with the unsuccessful remittance transfer and, if applicable, when the undelivered funds are returned to the provider.

Finally, although the Bureau had also sought comment on the exchange rate that should apply when transfers are resent following an error that occurred because the sender provided incorrect or insufficient information, that issue is largely moot insofar as the 2013 Final Rule requires these transactions to be treated as new remittance transfers. As explained by comment 33(c)–2 in the 2012 Final Rule, if a remittance transfer was to be resent because an error occurred following a sender's mistake, the original exchange rate applied to the resend of the transfer. Thus, the recipient would have received the same amount and type of currency that the sender had provided to fund the transfer. Industry commenters generally had argued that a sender should not benefit from an exchange rate that has changed in the sender's favor due to an error that occurred because of the sender's mistake and thus the same exchange rate that applied to the original transfer should apply to the resent transfer. Insofar as the Bureau is revising the remedy in the 2013 Final Rule for errors that occurred because of a sender's mistake, if a sender chooses to resend a remittance transfer under the revised rule and the remittance transfer provider agrees, the remittance transfer will be treated as a new remittance transfer, and thus the exchange rate used for transfers on the date of resend will necessarily apply to it. Insofar as providers are concerned with the exchange rate used when funds are refunded to the sender in the original currency, the Bureau believes it appropriate to maintain the originally disclosed exchange rate insofar as the refund should put the parties in the same position they were in prior to the transfer, less the taxes and fees that the provider may deduct.

Revisions to the Official Interpretations of § 1005.33(c)(2)

As noted above, in the December Proposal, the Bureau proposed to modify comment 33(c)–2 to eliminate a phrase stating that requests to resend (following an error that occurred because the sender provided incorrect or insufficient information) are considered requests for remittance transfers. Relatedly, proposed comment 33(c)–11 would have clarified how to provide the disclosures required by proposed § 1005.33(c)(3). Insofar as resends, as they existed in the 2012 Final Rule, will no longer be permitted as remedies for errors pursuant to § 1005.33(a)(1)(iv) where a sender provided incorrect or insufficient information, the Bureau is not adopting these proposed revisions to comment 33(c)–2. The December Proposal also would have revised comment 33(c)–2 to correspond with the proposed exception in § 1005.33(a)(1)(iv)(D) by removing the comment's reference to senders' mistakes about an account number and to make clear that no error would have occurred in this situation if the remittance transfer provider satisfied the requirements of proposed § 1005.33(h). The Bureau received no comments regarding the specific amendments to proposed § 1005.33(c)(2) and comment 33(c)–2, with respect to the proposed adjustments necessary to correspondent to the proposed exception in § 1005.33(a)(1)(iv)(D). Consequently, those portions of proposed comment 33(c)–2 are adopted as proposed with some alterations to improve clarity.

Comment 33(c)–2, as finalized in the 2013 Final Rule, now states that the remedy in § 1005.33(c)(2)(iii) applies if a remittance transfer provider's failure to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer, such as by erroneously identifying the designated recipient's address or by providing insufficient information such that the entity distributing the funds cannot identify the correct designated recipient. A sender is not considered to have provided incorrect or insufficient information for purposes of § 1005.33(c)(2)(iii) if the provider discloses the incorrect location where the transfer may be picked up, gives the wrong confirmation number/code for the transfer, or otherwise miscommunicates information necessary for the designated recipient to pick-up the transfer. The remedies in § 1005.33(c)(2)(iii) do not apply if the sender provided an incorrect account number or recipient institution identifier and the provider has met the requirements of § 1005.33(h) because under § 1005.33(a)(1)(iv)(D) no error would have occurred. *See* § 1005.33(a)(1)(iv)(D) and comment 33(a)–7.

The Bureau is also adopting a new comment 33(c)–11, which reflects the new refund procedure, and which replaces language regarding resends from comment 33(c)–2. As revised in the 2013 Final Rule, comment 33(c)–11 states that § 1005.33(c)(2)(iii) generally requires a remittance transfer provider to refund the transfer amount to the sender even if the sender's previously designated remedy was a resend or if the provider's default remedy in other

circumstances is a resend. However, if before the refund is processed, the sender receives notice pursuant to § 1005.33(c)(1) or (d)(1) that an error occurred because the sender provided incorrect or insufficient information and then requests that the provider send the remittance transfer again, and the provider agrees to that request, § 1005.33(c)(2)(iii) requires that the request be treated as a new remittance transfer and the provider must provide new disclosures in accordance with § 1005.31 and all other applicable provisions of subpart B. However, § 1005.33(c)(2)(iii) does not obligate the provider to agree to a sender's request to send a new remittance transfer.

Section 1005.33(c)(2)(iii), as adopted in the 2013 Final Rule, applies in situations where an error occurs because the sender provided incorrect or insufficient information, and overrides provisions that generally permit both a sender's prior selection of a resend remedy, *see* comment 33(c)–3, and a remittance transfer provider's designation of a default remedy, *see* comment 33(c)–4, where that default is to resend a transfer. Accordingly, the Bureau is revising comments 33(c)–3 and –4.

As to comment 33(c)–3 in the 2012 Final Rule, which explains how a sender designates a preferred remedy insofar as the revisions to § 1005.33(c)(2) will no longer allow a sender to designate a remedy (or will nullify a designation of a resend remedy prior to the conclusion of an investigation) when an error occurs because the sender provided incorrect or insufficient information, the portion of the comment discussing advance designation of a remedy is revised in the 2013 Final Rule. Comment 33(c)–3 now states, like the 2012 Final Rule, that the provider may also request that the sender indicate the preferred remedy at the time the sender provides notice of the error. However, as finalized, the comment states that if the provider does so, it should indicate that if the sender chooses a resend at that time, the remedy may be unavailable if the error occurred because the sender provided incorrect or insufficient information. This will prevent senders from being confused as to why they did not receive their requested remedy. However, if the sender does not indicate the desired remedy at the time of providing notice of error, the provider must notify the sender of any available remedies in the report provided under § 1005.33(c)(1) or (d)(1) if the provider determines an error occurred.

Similarly, the Bureau is revising comment 33(c)–4 to explain that a remittance transfer provider's default remedy is overridden by the requirements of § 1005.33(c)(2)(iii), which sets forth a specific remedy that applies when an error occurs because a sender provides incorrect or insufficient information. The Bureau is also making conforming changes to comment 33(c)–5 to reflect the renumbering in § 1005.33(c)(2).

Finally, in light of the changes described above to § 1005.33(c)(2)(ii), the Bureau is adopting new comment 33(c)–12, which provides guidance on how a remittance transfer provider should determine the amount to refund to the sender, or to apply to a new transfer, pursuant to § 1005.33(c)(2)(iii). Comment 33(c)–12 explains that although § 1005.33(c)(2)(iii) permits the provider to deduct from the amount refunded, or applied towards a new transfer, any fees or taxes actually deducted from the transfer amount by a person other than the provider as part of the first unsuccessful remittance transfer attempt or that were deducted in the course of returning the transfer amount to the provider following a failed delivery. However, a provider may not deduct those fees and taxes that will ultimately be refunded to the provider. When the provider deducts fees or taxes from the amount refunded pursuant to § 1005.33(c)(2)(iii), the provider must inform the sender of the deduction as part of the notice required by either § 1005.33(c)(1) or (d)(1) and the reason for the deduction. Comment 33(c)–12 also contains several illustrative examples.

33(h) Incorrect Account Number Provided by the Sender

Proposed § 1005.33(h) contained several conditions that a remittance transfer provider would have been required to satisfy in order to benefit from the proposed exception in § 1005.33(a)(1)(iv)(D). Specifically, proposed § 1005.33(h)(1) through (4) would have provided four conditions, including: That the provider be able to demonstrate that the sender did in fact provide an incorrect account number, that the provider gave the sender notice that if the sender provided an incorrect account number that the transfer could be lost, that the incorrect account number resulted a deposit of the transfer into the wrong account, and that the provider used reasonable efforts to attempt to retrieve the mis-deposited funds.

In response to proposed § 1005.33(h), many industry commenters sought more specificity in the conditions, especially with respect to the form of notice required to inform senders that the transfer amount could be lost, what would satisfy as a reasonable effort to retrieve lost funds, and the timeframe in which such efforts would be deemed prompt. Other industry participants, however, supported the generality in the proposed conditions because the commenters believed that the conditions provided flexibility and accommodated existing practice. In addition, some industry commenters expressed concern with the proposed condition that funds actually be mis-deposited into the wrong account for the proposed exception to apply. These commenters argued that often it is difficult for remittance transfer providers to know whether funds have in fact been mis-deposited. The Bureau has considered these comments and is finalizing the rule with five conditions in § 1005.33(h)(1) through (5), each of which is discussed below.

Generally speaking, the Bureau believes that the conditions set forth in § 1005.33(h) are consistent with industry best practices today and will provide further incentive to continue improving safeguards against mis-deposit over time. Where a remittance transfer is deposited into the wrong account today, the Bureau believes that many, if not most, providers already attempt to recover the principal amount of the transfer. However, because providers have reported that they often do not have direct relationships with receiving institutions, and that in some instances those institutions may be unresponsive to requests for assistance, providers may face difficulties in recovering funds from the wrong account. The Bureau believes that, in many instances, to reverse these transactions requires the accountholder to authorize a debit from the account and, thus, the lack of this authority may prohibit a recipient institution from debiting the account in the amount of the incorrect deposit absent an authorization. Relatedly, a provider in the United States may be able to do little to assist the foreign institution in its attempt to persuade its accountholder to provide debit authorization due to the lack of privity between the provider and the recipient institution or the accountholder.

Thus, the 2013 Final Rule strikes an appropriate balance by limiting the exception in § 1005.33(a)(1)(iv)(D) to circumstances of actual mis-deposits and by requiring reasonable verification methods, without holding remittance transfer providers responsible for circumstances beyond their control.

33(h)(1)

Proposed § 1005.33(h)(1) would have required that a remittance transfer provider be able to demonstrate that the sender provided an incorrect account number in connection with the remittance transfer. The Bureau explained that it did not believe that this proposed condition represented a substantial change from the 2012 Final Rule, which incentivized providers to document whether the sender had provided inaccurate information in order to invoke the right to charge certain related fees in connection with a resent transaction. *See* § 1005.33(c)(2)(ii)(A)(*2*) in the 2012 Final Rule. The Bureau received no comments specific to this proposed condition. Accordingly, proposed § 1005.33(h)(1) is adopted substantially as proposed, except that it is expanded to apply both to account numbers and recipient institution identifiers, as discussed above. The comment is also revised to make clear that the provider must be able to demonstrate that the sender provided the incorrect account number or recipient institution identifier, language that was in proposed § 1005.33(h).

33(h)(2)

In the December Proposal, the Bureau noted that typically remittance transfer providers have no means to verify whether a sender provided account number for the designated recipient is accurate. Thus, the Bureau did not propose, as a condition of the proposed exception in § 1005.33(a)(1)(iv)(D), that providers verify account numbers before sending a remittance transfer to an account. However, and as noted above, the Bureau is expanding the exception to § 1005.33(a)(1)(iv) to include senders' mistakes regarding recipient institution identifiers, as well as mistakes regarding account numbers.

In response to the Bureau's request for comment on sender mistakes generally, some industry commenters acknowledged that, in some instances, institution identifier information provided by senders may be at least partially verifiable. Foremost among these are BICs (sometimes referred to as SWIFT codes) and other recipient institution identifiers. Commenters noted, however, that verification is neither ubiquitous nor perfect. Several consumer group commenters argued, on the other hand, that the Bureau should not expand the exception to mistakes regarding recipient institution identifiers because remittance transfer providers should be able to verify such identifiers.

As a result of the Bureau's inclusion of recipient institution identifiers in the exception to the definition of error under § 1005.33(a)(1)(iv)(D), the Bureau is adopting new § 1005.33(h)(2), which provides that for any instance in which the sender provided the incorrect recipient institution identifier, prior to or when sending the transfer, the provider used reasonably available means to verify that the recipient institution identifier provided by the sender corresponded to the recipient institution name provided by the sender.

As adopted, § 1005.33(h)(2) will permit remittance transfer providers to rely on the exception in § 1005.33(a)(1)(iv)(D) only in situations where no reasonable verification is possible or where reasonably available means were applied but were unable to prevent a mis-deposit that occurred because the sender provided an incorrect recipient institution identifier. The exception does not apply to account number mistakes insofar as the Bureau continues to believe that no reasonable means to verify that an account number matches the name of the designated recipient disclosed to the sender exists today for most transfers. The Bureau will continue to monitor whether expansion of the condition is appropriate. Furthermore, § 1005.33(h)(2) requires that the verification occur prior to or when the provider is sending the transfer because if the verification occurs later it may be too late to prevent a mis-deposit.

The Bureau is adopting new comment 33(h)–1, which explains that the exception in § 1005.33(a)(1)(iv)(D) applies only when a sender provides an incorrect recipient institution identifier, § 1005.33(h)(2) limits the exception in § 1005.33(a)(1)(iv)(D) to situations where the provider used reasonably available means to verify that the recipient institution identifier provided by the sender did correspond to the recipient institution name provided by the sender. Reasonably available means may include accessing a directory of Business Identifier Codes and verifying that the code provided by the sender matches the provided institution name, and, if possible, the specific branch or location provided by the sender. Comment 33(h)–1 explains that providers may also rely on other commercially available databases or directories to check other recipient institution identifiers. If reasonable verification means fail to identify that the recipient institution identifier is incorrect, the exception in § 1005.33(a)(1)(iv)(D) will apply, assuming that the provider can satisfy the other conditions in § 1005.33(h). Similarly, if no reasonably available means exist to verify the accuracy of the recipient institution identifier, § 1005.33(h)(2) would be satisfied and thus the exception in § 1005.33(a)(1)(iv)(D) also will apply, again assuming the provider can satisfy the other conditions in § 1005.33(h). However, where a provider does not employ reasonably available means to verify a recipient institution identifier, § 1005.33(h)(2) is not satisfied and the exception in § 1005.33(a)(1)(iv)(D) will not apply.

The Bureau is adopting this provision because upon further consideration, it concludes that if remittance transfer providers want to avail themselves of the exception to § 1005.33(a)(1)(iv) for mistakes regarding recipient institution identifiers, they must take reasonable steps to limit the occurrence of these mistakes. The Bureau believes that, in many instances providers can and currently do verify the accuracy of some identifiers, and that in many other instances verification is not feasible. For example, many providers require, and senders provide, BICs to identify recipient institutions. Providers, or their third-party partners, typically have access to a directory in which they can match the BIC with the institution name (and possibly location), and the Bureau believes many providers (or their business partners) perform such verifications today. The Bureau also recognizes, however, that some providers may not conduct such verification. In other instances, precise verification that the sender has identified the proper institution may be challenging, particularly if a recipient institution has no BIC code or other type of identifier for which there is an internationally accessible directory, or if a sender has not given all the information about the recipient institution that may be reflected in a numerical identifier, such as the branch location.[10] The Bureau believes the requirement appropriately requires verification where such mechanisms are reasonable available.

Finally, the Bureau notes that it intends to monitor the availability of other means to verify account numbers and recipient institution identifiers and it may propose to revise § 1005.33(a)(1)(iv)(D) and (h)(2) and the related commentary if such means become reasonably available.

[10] See *http://www.swift.com/products_services/bic_and_iban_format_registration_bic_details.*

33(h)(3)

Proposed § 1005.33(h)(2) would have required a remittance transfer provider to demonstrate that the sender had notice that, if the sender provided an incorrect account number, the sender could lose the transfer amount. Although the Bureau did not propose a specific form of notice under proposed § 1005.33(h)(2), it requested comment on whether the Bureau should specify the form of the notice and when and how such notice should be delivered.

Industry commenters were largely divided on whether the Bureau should provide specific form and content instructions for the required notice. However, no commenter objected to the basic requirement of notice, and several commenters affirmatively agreed that notice would be beneficial. Those commenters who preferred that the Bureau specify a specific form for the required notice, including several smaller depository institutions, argued that model language provided by the Bureau would ease their compliance burden, particularly if there were a safe harbor for its use. Those commenters who preferred the flexibility of the proposed notice provisions argued that remittance transfer providers may already provide this sort of notice in a number of different forms. To require, or encourage through a safe harbor, specific model language or a form, these commenters contended, would cause remittance transfer providers to incur additional compliance costs as they would be required to alter existing forms and practices to match whatever the Bureau has established. In addition, these commenters argued, providers would need additional time to comply with this final rule if they were required to use specific language to provide the proposed notice.

Several consumer group commenters argued that the proposed notice should be provided in a clear and conspicuous manner and in the same language that the rest of the transfer is conducted. These commenters urged the Bureau to adopt a notice that comports with the clarity and language requirements of similar disclosures in other consumer statutes.

The Bureau adopts proposed § 1005.33(h)(2) with three changes as § 1005.33(h)(3). New § 1005.33(h)(3) provides as a condition of § 1005.33(a)(1)(iv)(D) exception, a requirement that the remittance transfer provider provided notice to the sender before the sender made payment for the remittance transfer that, in the event the sender provided an incorrect account number or recipient institution identifier, the sender could lose the transfer amount. The provision also provides that for purposes of providing the § 1005.33(h)(3) notice, § 1005.31(a)(2) applies to this notice unless the notice is given at the same time as other disclosures required by subpart B for which information is permitted to be disclosed orally or via mobile application or text message, in which case this disclosure may be given in the same medium as the other disclosures

This provision reflects three changes from the December Proposal: (1) Mention of recipient institution identifiers in light of the expanded scope of § 1005.33(a)(1)(iv)(D); (2) clarification that the notice must be provided before the sender authorizes the remittance transfer; (3) clarification that this notice may be given orally if provided along with a prepayment disclosure provided orally in accordance with § 1005.31(a)(2).[11] The Bureau believes that the requirement that the notice be provided before authorization of the transfer is generally in accordance with how most providers currently provide notice today and thus should not be a significant change from existing practice. The 2013 Final Rule does not specify the form of such notice but the Bureau intends to monitor how providers implement this condition to determine whether additional specificity is appropriate.

The Bureau notes that, pursuant to the revisions to § 1005.31(a)(1) discussed above, the notice provided pursuant to § 1005.33(h)(3), like all disclosures required by subpart B of Regulation E, in § 1005.33(h)(3) must be clear and conspicuous. *See also* comment 33(a)(1)–1. In addition, insofar as the Bureau has also amended the foreign language requirements of § 1005.31(g) to apply to all disclosures permitted by the 2013 Final Rule, the notice permitted by § 1005.33(h)(3) must be disclosed in accordance with the foreign language disclosure requirements of § 1005.33(g)(1).

As explained in the December Proposal, the Bureau's goal is to ensure that senders are informed of the risks of a mistake. Given that many remittance transfer providers are already providing notices of this risk through various means, the Bureau wants to ensure that the practice is adopted across the remainder of the industry while minimizing the need to change existing notices if they were already sufficient for the purposes of proposed § 1005.33(h)(2). While the Bureau understands that providing model language might make compliance easier for some providers, the Bureau believes that there are sufficient models available in providers' existing materials that it is inappropriate to delay adoption of this condition while the Bureau designs and tests appropriate model language.

33(h)(4)

Proposed 33(h)(3) would have stated that for a remittance transfer provider to avail itself of the exception in proposed § 1005.33(a)(1)(iv)(D), the provider would be required to demonstrate that the incorrect account number resulted in the deposit of the remittance transfer into a customer's account that is not the designated recipient's.

The Bureau received a number of comments from industry commenters and some consumer group commenters encouraging the Bureau to eliminate this proposed condition. These commenters stated that even if funds are not deposited into another customer's account, other forms of improper routing due to erroneous information provided by a sender could cause transferred funds to be lost or, at the very least, delayed beyond the original date of availability. Other consumer group commenters disagreed, however, asserting that, in their opinion, remittance transfer providers typically can retrieve funds that have been misrouted unless the funds are deposited into the wrong customer's account. These consumer group commenters opined that so long as the funds remain in an institution's control, there is generally no concern that those funds will disappear.

The Bureau is adopting proposed § 1005.33(h)(3) substantially as proposed as § 1005.33(h)(4). The Bureau believes, as stated in the December Proposal, that when a remittance transfer is sent with the wrong account number for the designated recipient, a remittance transfer provider will be far more likely to recover the funds in situations where the funds are either rejected by another institution or otherwise reversed before they are deposited into the wrong account. To the extent that commenters' concerns related to the delay of funds rather than their disappearance, as noted above, the Bureau declines to expand the exception in § 1005.33(a)(1)(iv)(D) to cover delayed transfers rather than actual mis-deposited transfers.

33(h)(5)

Proposed 33(h)(4) would have required a remittance transfer provider

[11] Section 1005.31(a)(2) generally requires disclosures required by subpart B of Regulation E to be in writing. The provision makes exceptions for pre-payment disclosures, which may be provided electronically.

to promptly use reasonable efforts to recover the amount that was to be received by the designated recipient. Proposed comment 33(h)–1 would have clarified how a provider might use reasonable efforts to recover funds. The Bureau received several comments on the proposed provision and associated commentary.

Several industry commenters and consumer groups agreed with this proposed condition. These commenters approved of its flexibility and one industry commenter noted that it was in accordance with its preexisting practice, which is to exercise best efforts to recover missing funds. Two other commenters—a trade association and credit union—asked that the Bureau provide more explanation regarding the timeframe to meet the promptness requirement and the number of attempts to recover the funds required. These commenters were concerned that the lack of clarity would invite litigation as to whether a particular remittance transfer provider's efforts were in fact reasonable and prompt.

Finally, one commenter asked that the Bureau clarify that a recipient institution, even if also the remittance transfer provider, not be required to debit an account that has a zero balance. In other words, this commenter sought clarity on whether it would be required to advance funds on behalf of a customer if that customer has withdrawn the transfer amount from the customer's account. The Bureau does not believe clarification on this point is necessary, insofar as nothing in the 2013 Final Rule states that a provider is required to advance funds that the recipient institution cannot retrieve from a customer if the exception in § 1005.33(a)(1)(iv)(D) applies. Rather, the 2013 Final Rule has the opposite intent—the exception is intended to apply when funds cannot be retrieved.

Accordingly, the Bureau is finalizing proposed § 1005.33(h)(4) substantially as proposed as § 1005.33(h)(5). The Bureau continues to believe—as it explained in the December Proposal—that it is not appropriate to mandate specific methods that a remittance transfer provider must use to attempt to recover funds. The Bureau believes the circumstances around individual transfers can vary greatly and that what may be reasonable in one circumstance may be unreasonable in another.

In addition, the Bureau is adopting proposed comment 33(h)–1 substantially as proposed as comment 33(h)–2 with minor revisions to improve clarity and to replace one of the proposed examples. The Bureau is also incorporating proposed comment 33(h)–1.iii to comment 33(h)–1, which now states that § 1005.33(h)(5) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. Under § 1005.33(h)(5), if the remittance transfer provider is requested to provide documentation or other supporting information in order for the pertinent institution or authority to obtain the proper authorization for the return of the incorrectly credited amount, reasonable efforts to recover the amount include timely providing any such documentation to the extent that it is available and permissible under law. The two examples in proposed comments 33(h)–1.i and .ii are finalized as proposed as comments 33(h)–2.i. and .ii.

Proposed comment 33(h)–2 would have explained that the proposed condition requires a remittance transfer provider to act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. The Bureau received comments from industry that it should clarify when exactly reasonable efforts are considered to be prompt and also that it should create a safe harbor time period in which efforts would be deemed prompt. The Bureau continues to believe that whether a particular provider's efforts are prompt depends on the facts and circumstances, for instance when the fact of an error is first identified. In general, the Bureau believes a provider acts promptly where it acts before the date that the funds are expected to be made available to the recipient, but a provider may not have notice that there is a problem with the transfer that early. Accordingly, the Bureau has adopted proposed comment 33(h)–2 as comment 33(h)–3 and is expanding its discussion. The comment adopts the proposed language explaining that § 1005.33(h)(5) requires that a remittance transfer provider act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient and that whether a provider acts promptly to use reasonable efforts depends on the facts and circumstances. The comment also provides an example stating that where a sender informs the provider that he or she had provided a mistaken account number before the date of availability disclosed pursuant to § 1005.31(b)(2)(ii), the provider has acted promptly if it attempts to contact the institution that received the incorrect remittance transfer before the disclosed date of availability.

Section 1005.36 Transfers Scheduled Before the Date of Transfer

Under § 1005.36 of the 2012 Final Rule, the Bureau established disclosure requirements specifically applicable to remittance transfers scheduled before the date of transfer. Section 1005.36(a) and (b) address specific requirements for the timing and accuracy of disclosures for these remittance transfers. Section 1005.36(c) addresses the cancellation requirements applicable to any remittance transfer scheduled by the sender at least three business days before the date of the transfer, including preauthorized remittance transfers. As described above, there is no longer a requirement to disclose taxes collected by a person other than the provider. *See* § 1005.31(b)(1)(vi). As a result, comment 36(a)(2)–1, which relates to disclosures required for preauthorized transfers, has been amended to refer solely to the required disclosure of taxes collected by the provider and not those collected by a third party.

Appendix A—Model Disclosure Clauses and Forms

In Appendix A of the 2012 Final Rule, the Bureau provides twelve model forms that a remittance transfer provider may use in connection with remittance transfers. The 2012 Final Rule also provides instructions related to the use of these model forms. In particular, Instruction 4 to Appendix A provides general instructions for how providers may use the model forms, including instructions as to formatting and necessary disclosures. Instruction 4 also describes what portions of the disclosures are optional, and states that the Bureau will not review or approve providers' disclosure forms.

In light of the changes to the 2012 Final Rule's disclosure requirements discussed above, the 2013 Final Rule amends the model forms, as well as the related instructions in Appendix A, and includes several additional model forms reflecting the new requirements. First, the Bureau is removing from all of the model forms references to ''Other Taxes'' because the Bureau has eliminated this disclosure requirement. *See* § 1005.31(b)(1)(vi). Second, although there is no longer a requirement to disclose recipient institution fees in certain circumstances, there remains a requirement that remittance transfer providers disclose covered third-party fees under

§ 1005.31(b)(1)(vi). As a result, the line on the model forms that relates to the disclosure of the amount of ''Other Fees'' has been retained and will now reflect only covered third-party fees imposed upon the remittance transfer.

Third, insofar as § 1005.31(b)(1)(viii) requires a remittance transfer provider to include disclaimers on the required disclosures where non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider may apply, the model forms have been amended to include versions of these disclaimers. These disclaimers are required unless a provider knows that neither non-covered third-party fees nor taxes collected on the remittance transfer by a person other than the provider apply. *See* § 1005.31(b)(1)(viii) and comment 31(b)(1)(viii)–1. Thus, where a disclaimer is necessary, there are now three potential disclaimer statements that could be used depending on the nature of the transaction: (1) A disclaimer that states that the recipient may receive less due to fees charged by the recipient's bank; [12] (2) A disclaimer that states that the recipient may receive less due to foreign taxes; [13] or (3) A disclaimer that states that the recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

In addition to the requirement to include these disclaimers, a remittance transfer provider may also elect to disclose the actual or estimated amounts of non-covered third-party fees and taxes collected by a person other than the provider. *See* §§ 1005.31(b)(1)(viii) and 1005.32(b)(3). Model forms A–30(a) through (d) include samples of how a provider may include versions of these required disclaimers, as well as the optional disclosures regarding the actual or estimated amount of such fees and taxes.

Specifically, Model Form A–30(a) provides sample disclaimer language that ''a recipient may receive less due to fees charged by the recipient's bank and foreign taxes.'' Model Forms A–30(b) through (d) include examples of how a remittance transfer provider could include the optional estimates of non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider. Specifically, Model Form A–30(b) includes a sample disclaimer that shows a parenthetical containing an estimate of the applicable non-covered third-party fees that may apply to the sample transfer, while Model Form A–30(c) includes a sample disclaimer that shows a parenthetical with an estimate for the taxes collected on the remittance transfer by a person other than the provider that may apply. Model Form A–30(d) includes an example for how a provider could provide an estimate for both non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider. Finally, although not included in a model form, if a provider knows that fees or taxes will be deducted, the disclaimer could indicate that the recipient ''will receive less,'' rather than ''may receive less,'' due to non-disclosed fees and taxes. A provider also may elect to include the precise amounts for fees and/or taxes.

Instruction 4 also has been amended to indicate that the disclosure of the actual or estimated amounts for non-covered third-party fees and taxes collected by a person other than the provider is optional as provided in § 1005.31(b)(1)(viii) in the 2013 Final Rule. Instruction 4 also now includes language that a remittance transfer provider cannot include disclaimers that cannot apply to the particular transfer. For example, if the provider knows that the only fees that can apply to the transfer are covered third-party fees, a provider should not include a fee disclaimer. *See* § 1005.31(b)(1)(viii) and comment 31(b)(1)(viii)–1.

Finally, because additional model forms have been added, the Appendix and Instructions are revised to indicate that there are now 15 model forms.

Effective Date

This final rule is effective on October 28, 2013. As discussed below, the Bureau believes that this effective date will, on balance, facilitate the implementation of both the remaining requirements of the 2012 Final Rule and the new requirements of the 2013 Final Rule.

In the December Proposal, the Bureau proposed to temporarily delay the effective date of the 2012 Final Rule from February 7, 2013, until 90 days after the publication of the 2013 Final Rule in the **Federal Register**. The Bureau stated then that it believed that this modest delay would balance the need for consumers to receive the protections afforded by the rule as quickly as possible with industry's need to make adjustments to comply with the provisions of the rule. As part of the December Proposal, the Bureau sought comment on this proposed 90-day extension period. On January 29, 2013, in the Temporary Delay Rule, the Bureau temporarily delayed the February 7, 2013 effective date pending completion of this rulemaking.

All commenters—including consumer group commenters—generally agreed that the Bureau should extend the effective date of the 2013 Final Rule until at least 90 days after it is published in the **Federal Register**. Although no commenters suggested an implementation period of fewer than 90 days following publication of the 2013 Final Rule, one consumer group commenter noted that while it did not object to a 90 day-extension, it saw no need for any implementation period longer than 90 days after the finalization of this rule. Additionally, one industry trade association suggested a 90-day implementation period could be workable depending on the scope of the final rule. Most industry commenters, however, urged the Bureau to extend the effective date beyond 90 days. In doing so, industry commenters suggested a range of periods—with many industry commenters suggesting periods of between 180 and 365 days following the publication of the 2013 Final Rule. One industry trade association provided an example of an implementation timeline suggesting that a large correspondent would need at least 121 days from when the final rule is released in order to integrate a compliance solution within its client banks' systems. Industry commenters in general contended that remittance transfer providers, their vendors, and other business partners all would need additional time to adjust their computer systems and compliance procedures, renegotiate contracts, and train staff.

Separately, commenters representing smaller insured institutions in particular requested a longer implementation period, stating that many of these remittance transfer providers depend on larger third-parties to aid their compliance. These commenters uniformly stated that smaller providers might face particular challenges with implementing necessary changes over a short time period because smaller providers will only be able to integrate compliance solutions after the third parties have incorporated necessary updates and conduct testing, and include the changes in their scheduled releases. Relatedly, a number of these commenters referenced the Bureau's recent rulemakings pursuant to

[12] In the interest of clarity on the model forms, non-covered third-party fees are referred to as ''fees charged by a recipient's bank.'' However, to the extent that the term ''bank'' is imprecise, a provider may use an alternate term to describe the recipient institution.

[13] Also in the interest of clarity, these taxes are described as ''foreign taxes,'' although it is possible that the taxes collected by a person other than the provider could include taxes imposed by a U.S. state or the Federal government where such taxes are not collected by the provider.

title XIV of the Dodd-Frank Act [14] and indicated that implementing all of the requirements of those rules and the requirements of this final rule at the same time will create a significant cumulative burden. These industry commenters also expressed concern over both the breadth and complexity of new rules expected from the Bureau.

The industry commenters' concerns regarding the implementation period, particularly those relating to necessary system changes, were largely focused around three expected results of the 2012 Final Rule, as it would have been modified by the December Proposal: (1) The need to build and maintain a database of applicable taxes imposed by foreign countries' central governments; (2) the need to obtain fee schedules or other information regarding applicable recipient institution fees in order to compute estimates of the applicable fees; and (3) the need to adjust systems and processes to accommodate the provisions discussing resends to correct errors that occurred because the sender provided incorrect or insufficient information. Furthermore, some industry commenters suggested that the appropriate effective date would depend on the scope of the final rule. Noting the difficulty of collecting certain information concerning recipient institution fees and foreign taxes, as indicated above, one industry trade association commenter indicated that if the Bureau eliminated the requirement to disclose recipient institution fees and foreign taxes and simplified the procedure for resends, then this commenter thought that a 90-day implementation period could be workable.

The Bureau is adopting an effective date of October 28, 2013. In light of the way the Bureau has streamlined the requirements of the 2012 Final Rule, the Bureau believes that an effective date of October 28, 2013 (or approximately 180 days after the release of the 2013 Final Rule) will allow sufficient time for providers, both large and small, to implement any necessary changes to their systems in order to comply with the 2013 Final Rule. The Bureau is adopting a date certain in order to eliminate the risks of delay and provide greater assurances to both consumers and industry as to when to expect the valuable protections of the new rule. The Bureau also believes that this implementation period allows sufficient time because the Bureau is not adopting the aspects of the December Proposal that commenters identified as requiring the most time to implement.

The primary additional substantive requirements in the 2013 Final Rule are the requirement that remittance transfer providers include disclaimers regarding non-covered third-party fees and taxes collected by a person other than the provider and adopt additional verification measures and provide notice to senders of the potential loss of funds to take advantage of the Bureau's expansion of the exception to the definition of the term error under § 1005.33(a)(1)(iv)(D). The Bureau believes that any programmatic changes required by these provisions should not take most providers a particularly long period of time to implement. To the extent providers need to change the terms of their consumer contracts or other communications to provide senders the notice contemplated by § 1005.33(h)(3), the Bureau expects the required time to produce this notice will be modest, particularly because the 2013 Final Rule does not mandate any particular notice form, or format apart from requiring that such notice be clear and conspicuous and meet certain foreign language requirements. Although translating such notice may require testing and certain systems changes, and the Bureau expects that many providers will integrate any such notice into existing communications or the required prepayment disclosures.

Moreover, based on its outreach and monitoring of the market, the Bureau believes that responsible providers and correspondents are already using reasonable methods of verification to reduce the risk of errors. Nonetheless, recognizing that the 2013 Final Rule will likely require changes to informational technology and operational procedures and that small providers may benefit from additional time in order to test compliance solutions for their customers, the Bureau believes a modest increase in the implementation period from what was proposed may limit potential disruptions in the remittance transfer market.

For these reasons, the Bureau is expanding the implementation period for this final rule beyond what was proposed by making it effective October 28, 2013.

VI. Dodd-Frank Act Section 1022(b)(2)

Section 1022(b)(2) Analysis

A. Overview

In developing the 2013 Final Rule, the Bureau has considered potential benefits, costs, and impacts [15] and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding the consistency of the 2013 Final Rule with prudential, market, or systemic objectives administered by such agencies.[16]

The analysis below considers the benefits, costs, and impacts of the key provisions of the 2013 Final Rule against the baseline provided by the 2012 Final Rule. Those provisions regard: The disclosure of non-covered third-party fees and taxes collected by a person other than the remittance transfer provider, error resolution requirements with respect to situations in which senders provide incorrect or insufficient information regarding remittance transfers (including account numbers and recipient institution identifiers), and the effective date. With respect to these provisions, the analysis considers the benefits and costs to senders (consumers) and remittance transfer providers (covered persons).[17] The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

The Bureau notes at the outset that quantification of the potential benefits, costs, and impacts of the 2013 Final Rule is not possible due to the lack of available data. As discussed in the February Final Rule, there is a limited

[14] *See* Escrow Requirements under the Truth in Lending Act (Regulation Z), 78 FR 4725 (Jan. 22, 2013); Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013; High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6855 (Jan. 31, 2013); Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10695 (Feb. 14, 2013); Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013); Appraisals for Higher-Priced Mortgage Loans, 78 FR 10367 (Feb. 13, 2013); Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013).

[15] Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[16] The Bureau also solicited feedback from other agencies with supervisory and enforcement authority regarding the 2013 Final Rule.

[17] Benefits and costs incurred by remittance transfer providers may, in practice, be shared among providers' business partners, such as agents, correspondent banks, or foreign exchange providers. To the extent that any of these business partners are covered persons, the 2013 Final Rule could have benefits or costs for these covered persons as well.

amount of data about remittance transfers and remittance transfer providers that are publicly available and representative of the full market. Similarly, there are limited data on consumer behavior, which would be essential for quantifying the benefits or costs to consumers. Furthermore, as the Bureau has delayed the effective date of the 2012 Final Rule, providers are still in the process of implementing its requirements. Therefore, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the 2013 Final Rule. As discussed in more detail below, the Bureau expects that the 2013 Final Rule will generally benefit providers by facilitating compliance, while maintaining many of the 2012 Final Rule's valuable new consumer protections and ensuring that these protections can effectively be delivered to consumers.

B. Potential Benefits and Costs to Consumers and Covered Persons

1. Non-Covered Third-Party Fees and Taxes Collected by a Person Other Than the Provider

a. Benefits and Costs to Covered Persons

Compared to the 2012 Final Rule, the 2013 Final Rule benefits remittance transfer providers by eliminating some of the information that they were previously required to disclose, which will likely reduce the cost of providing required disclosures for most providers. The changes regarding fee and tax disclosures might additionally benefit providers by facilitating their continued participation in the market. Industry commenters suggested that due in part to the 2012 Final Rule's third-party fee and foreign tax disclosure requirements, some providers might eliminate or reduce their remittance transfer offerings, such as by not sending transfers to markets where tax or fee information is particularly difficult to obtain in light of the lack of ongoing reliable and complete information sources. By reducing the amount of information needed to provide disclosures, the Bureau expects that the 2013 Final Rule will encourage more providers to retain their current services (and thus any associated profit, revenue, and customers).

The 2013 Final Rule requires remittance transfer providers to add an additional disclaimer to disclosure forms in instances where non-covered third-party fees imposed and taxes collected by a person other than the provider may apply. The Bureau believes that the cost of adding these disclaimers will be small, particularly compared to the costs of complying with the disclosure requirements of the 2012 Final Rule. Affected providers will also have to reprogram systems to conform to the new requirements for calculating ''Other Fees'' (pursuant to § 1005.31(b)(1)(vi)) and the amount to be disclosed pursuant to § 1005.31(b)(1)(vii)). All providers will have to remove references to ''Other Taxes'' from their forms, and make any necessary system changes, insofar as the Bureau has eliminated this disclosure. The modification to existing forms and systems changes may be minimal for many providers whose processes allow for them to adjust forms and systems more easily, and the Bureau expects that some providers may not have finished any systems modifications necessary to comply with the 2012 Final Rule, and thus may be able to incorporate any changes into previously planned work. Furthermore, to the extent any provider elects to provide optional disclosures of non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider, providers may bear some costs in determining these amounts and programming disclosures to allow for the dynamic disclosure of this information.

The Bureau expects that the provisions regarding fee and tax disclosures will have the largest impact on depository institutions, credit unions, and broker-dealers that are remittance transfer providers. These types of providers tend to send most or all of their remittances transfers to foreign accounts, for which non-covered third-party fees could be charged. Furthermore, due to the mechanisms these providers use to send money, they generally have the ability to send transfers to virtually any destination country (for which tax research might be required) and thus many different recipient institutions. By contrast, money transmitters that are providers are more likely to send remittance transfers to be received by agents, for which non-covered third-party fees will not be relevant. Furthermore, with some exceptions, most money transmitters, and particularly small ones, generally send transfers to a limited number of countries and institutions; consequently, the benefits, in terms of avoided costs, of eliminating the requirement that taxes be disclosed may not be as large for these money transmitters as for other remittance transfer providers.

b. Benefits and Costs to Consumers

The changes regarding the disclosure of non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider may allow senders to avoid increased costs to the extent that remittance transfer providers pass along any cost savings from the new requirements in the form of lower prices. Also, if the 2013 Final Rule facilitates providers' continued participation in the market, it will prevent senders from having their access to remittance transfers limited, by giving them a wider set of options for sending transfers.

The Bureau believes that a minority of transfers will be affected by the refinements in the 2013 Final Rule concerning non-covered third-party fees insofar as a minority of remittance transfers are deposited into accounts. The Bureau is retaining the requirement to disclose covered third-party fees and, therefore, senders will retain the benefits derived from the disclosure of such fees. Specifically, the Bureau believes that the majority of remittance transfers are received in cash; therefore, the senders of those transfers will generally receive complete information about the fees applicable to the transfer. The Bureau, however, believes that most, if not all, transfers will be affected by the refinements concerning taxes collected on a remittance transfer by a person other than the provider, as providers may not be able to verify whether taxes may apply to particular transactions. It is important to note that the Bureau expects that fee and tax disclosures that would have been required by the 2012 Final Rule but that will not be required by the 2013 Final Rule will generally not vary across providers sending money to the same recipient account using the same mechanism.

The 2013 Final Rule may impose costs on senders that want a guarantee that the designated recipient receives a particular amount, to the extent that it makes disclosures for a particular transfer less accurate because disclosures will now contain disclaimers in lieu of actual figures regarding non-covered third-party fees, for transfer that could involve such fees, and taxes collected on the remittance transfer by a person other than the provider.

In addition, without the tax and fee disclosures, senders may have a more difficult time ensuring that an exact amount of money reaches a designated recipient and thus also may have difficulty determining if an error occurred because the designated recipient did not receive the amount disclosed. However, this difficulty should be mitigated when a sender

repeatedly transfers funds to the same recipient via the same method, as the recipient can inform the sender about taxes and fees that routinely apply to the transfer.

Eliminating the requirement that non-covered third-party fees be disclosed also may have varied effects on the ability of senders to comparison shop. As to those senders who are only shopping between providers that can send remittance transfers to a particular account via the same method, the 2013 Final Rule should not significantly reduce the ability of senders to compare costs across remittance transfer providers that can send remittances to this account. In fact, to the extent that providers are not providing differing estimates of the same recipient institution fees, consumers may benefit because comparisons will be easier. However, senders may have a more difficult time comparing costs across providers sending funds via different mechanisms. For example, if a sender is agnostic as to whether the designated recipient should receive the transfer in cash verses the transfer being deposited in the designated recipient's account, to the extent non-covered third-party fees are not disclosed, the sender may not appreciate the full costs of the latter option for sending the remittance transfer, or understand which method of transfer is likely to be most cost effective. For the transfer to an account, the pre-payment disclosure may not contain a disclosure of non-covered third-party fees, while the disclosure for the transfer to be received in cash must disclose all fees. Therefore, whether a sender's ability to comparison shop has been impaired by the changes in the 2013 Final Rule may depend on the type of comparison undertaken by the sender.

Nevertheless, as important as this information is for senders, requiring disclosure of non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider would likely require a substantial delay in implementation of all of the 2012 Final Rule or would produce a significant contraction in senders' access to remittance transfer services, particularly in smaller corridors. The Bureau believes that both of these results would impose significant costs on consumers and undermine the broader purposes of the statutory scheme.

2. Incorrect or Insufficient Information

a. Benefits and Costs to Covered Persons

The 2013 Final Rule includes two sets of changes related to errors caused by the sender's provision of incorrect or insufficient information in connection with a remittance transfer. First, the 2013 Final Rule creates a new exception to the definition of error for situations in which a sender provides an incorrect account number or recipient institution identifier, and the remittance transfer provider meets certain conditions. Second, the 2013 Final Rule also adjusts the remedy in certain situations, other than those covered by this new exception, in which an error occurred because the sender provided incorrect or insufficient information.

The exception to the definition of error benefits remittance transfer providers in instances in which senders' mistakes regarding account numbers or recipient institution identifiers, which would have resulted in errors under the 2012 Final Rule, will not constitute errors under the 2013 Final Rule, provided that providers satisfies the conditions enumerated in § 1005.33(h). There are several cumulative benefits of these changes to providers. First, to the extent that the new exception applies, providers will no longer bear the costs of funds that they cannot recover. The magnitude of the benefit will depend on the frequency of senders' mistakes regarding account numbers or recipient institution identifiers that result in funds being deposited in the wrong account with the provider unable to recover funds, and the sizes of those lost transfers.[18] The magnitude will also depend on the extent to which providers maintain procedures necessary to satisfy the conditions enumerated in § 1005.33(h).

Second, remittance transfer providers may derive additional benefit if the 2013 Final Rule reduces the potential for fraudulent account number mistakes made by unscrupulous senders, which providers have cited as a risk under the 2012 Final Rule. By eliminating the requirement, in some circumstances, that the provider resend or refund the transfer amount, the 2013 Final Rule reduces the direct costs of fraud and the indirect costs of fraud prevention and facilitates providers' continued participation in the remittance transfer market, without (or with fewer) new limitations on service. Industry commenters indicated that, at least in part, due to the risk of such fraud under the 2012 Final Rule, providers might exit the market or limit the size or type of transfers sent. The cumulative magnitude of these benefits will depend on the magnitude of the actual and perceived risk of account number- or recipient institution identifier-related fraud under the 2012 Final Rule.

The new exception to the definition of error does not impose any new requirements on remittance transfer providers and therefore will not directly impose costs on providers. But, to ensure that they can satisfy the conditions enumerated in § 1005.33(h) and thus trigger the new exception, providers may choose to bear some costs. For instance, providers may change their customer contracts or other communications to provide to senders the notice contemplated by § 1005.33(h)(3). However, the Bureau expects that the cost of doing so will be modest, particularly because the 2013 Final Rule does not mandate any particular notice wording, form, or format (apart from being clear and conspicuous and meeting certain foreign language requirements), and the Bureau expects that many providers already have included any such notice in their existing communications or the required prepayment disclosures. While the notice required by § 1005.33(h)(3) must generally be in writing, the Bureau believes that providers typically provide this notice in writing today. Relatedly, providers may change their existing procedures to implement the verification procedures contemplated by § 1005.33(h)(2). Again, however, insofar as most providers are already implementing verification methods like those contemplated by the 2013 Final Rule, most providers will bear minimal cost in complying with this requirement.

The Bureau expects that remittance transfer providers will generally not experience any other costs if they choose to satisfy the remainder of the conditions in § 1005.33(h), because their existing practices generally will already satisfy those conditions. In particular, based on outreach, the Bureau believes that keeping records or other documents that can satisfy the conditions described in § 1005.33(h) will generally match providers' usual and customary practices to serve their customers, to manage their risk, and to satisfy the requirements under the 2012 Final Rule to retain records of the findings of investigations of alleged errors. *See* § 1005.33(g)(2).

The extent to which remittance transfer providers will choose to bear any costs related to § 1005.33(h) and the magnitude of such costs will depend on providers' existing business practices, their expectations about the frequency

[18] Prior to the February Final Rule, the Credit Union National Association reported a rate of less than 1% for international wire ''exceptions.'' In more recent outreach, other industry participants suggested that investigation or exception rates for international wire transfers tend to be between 1 percent and 3 percent of all wire transfers.

and size of transfers that are deposited into the wrong accounts and not recovered because of account number or recipient institution identifier mistakes by senders, their expectations about the risk of fraud, as well as the extent to which providers have already begun adapting their practices to the 2012 Final Rule. The Bureau expects that providers will only develop their practices to comply with § 1005.33(h) if doing so will benefit the providers by reducing the costs of losses due to account number and recipient institution identifier mistakes by senders or fraud by more than the costs of implementing these practices. The Bureau believes that this could be the case for most providers that make transfers to accounts covered by the exception, particularly because the practices described in § 1005.33(h) closely match existing practice, and for those providers for whom it does not match existing practice, the practices that providers would have otherwise developed to comply with the 2012 Final Rule.

The changes regarding remedies for certain errors that occurred because the sender provided incorrect or insufficient information (other than those errors covered by the exception in § 1005.33(a)(1)(iv)(D)) will also benefit remittance transfer providers. In instances in which they are applicable, as discussed above, the changes will allow a provider to refund the transfer amount to the sender without having to meet the timing and other requirements of the 2012 Final Rule. In addition, insofar as the 2013 Final Rule permits providers, for errors that occurred because the sender provided incorrect or insufficient information, to deduct from the amount refunded any fees or taxes actually deducted from the transfer amount as part of the first unsuccessful transfer attempt, providers will no longer have to bear the cost of these fees and taxes, which previously providers could not pass on to senders. The changes regarding these remedies could impose a cost on remittance transfer providers to revise their procedures. Providers may need to arrange to send refunds when previously they were going to resend funds. Providers may also have to bear costs from the need to adjust their default remedies, procedures for requesting senders' preferred remedies, and error resolution reports, but the Bureau believes these costs should be minimal.

b. Benefits and Costs to Consumers

The new exception to the definition of error will allow senders to avoid increased prices, compared to the 2012 Final Rule, to the extent that remittance transfer providers pass along any cost savings in the form of lower prices. The new exception will also allow senders to avoid disruptions in available remittance transfer services, to the extent it would enable more providers to stay in the market or preserve the breadth of their current offerings, thus preserving competition.

Under certain conditions, a sender who provides an incorrect account or recipient institution identifier resulting in funds being delivered to the wrong account will bear the costs of those mis-deposited funds. However, as discussed above, the Bureau expects that the incidence of such losses will be rare; furthermore, the risk of incurring such costs may be mitigated, because senders will have stronger incentives to ensure the accuracy of account number and recipient institution identifier information to the extent possible. In addition, with respect to recipient institution identifiers, the exception is limited to situations in which the provider could not reasonably be expected to verify that the recipient institution identifier matches the institution's name or location or in which the verification does not prevent an error from occurring.

The Bureau expects that the changes regarding remedies for errors that occur because a sender provided incorrect or insufficient information will have very small impacts on senders. As described above, the Bureau expects that the circumstances in which the changes apply will arise infrequently. However, the changes impose a modest cost on senders for two reasons. First, for those senders that want to resend funds, they will be unable ask the provider to do so until the provider's investigation is complete (and the provider is not obligated to resend the funds at all). Second, insofar as the 2013 Final Rule permits providers to deduct from the amount refunded any fees or taxes actually deducted from the transfer amount by a person other than the provider as part of the first unsuccessful remittance transfer, this provision will impose a cost for senders in that they will now have to bear the cost of these fees and taxes that were to be absorbed by the provider under the 2012 Final Rule.

3. Effective Date

The extension of the 2012 Final Rule's effective date generally benefits remittance transfer providers by delaying the start of any ongoing compliance costs. The additional time may also enable providers (and their vendors) to build solutions that cost less than those that might otherwise have been possible. Senders also benefit to the extent that the changes eliminate any disruptions in the provision of remittance transfer services. But the delay also imposes costs on senders by delaying the time when they will receive the benefits of the 2012 Final Rule.

C. Access to Consumer Financial Products and Services

As discussed above, the Bureau expects that the 2013 Final Rule will not decrease consumers' (senders') access to consumer financial products and services relative to the 2012 Final Rule and may significantly preserve access by refining certain provisions of the rule that were likely to drive some remittance transfer providers to suspend or curtain their remittance services. By avoiding some of the costs that providers might otherwise have had to bear in order to provide disclosures and resolve errors under the 2012 Final Rule, the 2013 Final Rule may lead providers to reduce their prices and may reduce the likelihood that providers will exit the remittance market, compared to what might have occurred under the 2012 Final Rule. By facilitating providers' participation in the market, the 2013 Final Rule may give senders a wider set of options for sending transfers, as well as preserve competition within this market.

D. Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets

Given the lack of data on the characteristics of remittance transfers, the ability of the Bureau to distinguish the impact of the 2013 Final Rule on depository institutions and credit unions with $10 billion or less in total assets (as described in section 1026 of the Dodd-Frank Act) from the impact on depository institutions and credit unions in general is quite limited. Overall, the impact of the 2013 Final Rule on depository institutions and credit unions will depend on a number of factors, including whether they are remittance transfer providers, the importance of remittance transfers for the institutions, how many institutions or countries they send to, the cost of complying with the 2012 Final Rule, and the progress made toward compliance with the 2012 Final Rule.

However, information that the Bureau obtained prior to finalizing the August Final Rule suggests that among depository institutions and credit unions that provide any remittance transfers, an institution's asset size and

the number of remittance transfers sent by the institution are positively, though imperfectly, related. There are several inferences that can be drawn from this relationship. First, the Bureau expects that among depository institutions and credit unions with $10 billion or less in total assets that provide any remittance transfers, compared to larger such institutions, a greater share qualify for the safe harbor related to the definition of ''remittance transfer provider'' and therefore are entirely unaffected by the 2013 Final Rule because they are not subject to the requirements of the 2012 Final Rule. *See* § 1005.30(f)(2). Second, the Bureau believes that depository institutions and credit unions with $10 billion or less in total assets that are covered by the 2012 Final Rule will experience, on a per-institution basis, less of the variable benefits and costs described above because they generally perform fewer remittance transfers than larger institutions. However, to the extent that the 2013 Final Rule will reduce any fixed costs of compliance, such as the costs of gathering information on taxes and fees if these institutions were to attempt to do that themselves, these institutions may experience more of the benefits described above, on a per-transfer basis because that is likely how they pay the third party for the compliance services.

Additionally, the Bureau believes that the magnitude of the 2013 Final Rule's impact on smaller depository institutions and credit unions will be affected by these institutions' likely tendency to rely on correspondents or other service providers to obtain recipient institution fee and foreign tax information, as well as provide standard disclosure forms. In some cases, this reliance will mitigate the impact on these providers of 2013 Final Rule's provisions regarding such information because those third parties will likely spread the cost of any required work (or cost savings) across its customer institutions.

E. Impact of the 2013 Final Rule on Consumers in Rural Areas

Senders in rural areas may experience different impacts from the 2013 Final Rule than other senders. The Bureau does not have data with which to analyze these impacts in detail. However, to the extent that the 2013 Final Rule leads to more remittance transfer providers to continue to provide remittance transfers, the 2013 Final Rule may disproportionately benefit senders living in rural areas. Senders in rural areas may have fewer options for sending remittance transfers, and therefore may benefit more than other senders from changes that keep more providers in the market.

VII. Regulatory Flexibility Act

A. Overview

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required. 5 U.S.C. 609.

The Bureau is certifying the 2013 Final Rule. Therefore, a FRFA is not required for this rule because it will not have a significant economic impact on a substantial number of small entities.

B. Affected Small Entities

The analysis below evaluates the potential economic impact of the 2013 Final Rule on small entities as defined by the RFA.[19] The 2013 Final Rule applies to entities that satisfy the definition of ''remittance transfer provider'': any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. *See* § 1005.30(f).[20] Potentially affected small entities include insured depository institutions and credit unions that have $175 million or less in assets and that provide remittance transfers in the normal course of their business, as well as non-depository institutions that have average annual receipts that do not exceed $7 million and that provide remittance transfers in the normal course of their business.[21] These affected small non-depository entities may include state-licensed money transmitters, broker-dealers, and other money transmission companies.[22]

This analysis examines the benefits, costs, and impacts of the key provisions of the 2013 Final Rule relative to the baseline provided by the 2012 Final Rule. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

C. Non-Covered Third-Party Fees and Taxes Collected on the Remittance Transfer by a Person Other Than the Provider

The 2013 Final Rule eliminates the requirement that remittance transfer providers disclose non-covered third-party fees imposed and taxes collected on the remittance transfer by a person other than the provider. Under the 2013 Final Rule, providers are required to provide disclaimers, where applicable, noting that additional fees and taxes may apply and reduce the amount disclosed pursuant to § 1005.31(b)(1)(vii). The Bureau believes that the cost of adding these disclaimers will be small. Affected providers will also have to reprogram systems to conform to the new requirements for calculating ''Other Fees'' (pursuant to § 1005.31(b)(1)(vi)) and the amount to be disclosed (pursuant to § 1005.31(b)(1)(vii)). All providers will have to remove references to ''Other Taxes'' from their forms, and make any necessary systems changes, insofar as the Bureau has eliminated this disclosure. The modifications to existing forms and systems changes may be minimal for many providers whose processes allow for them to adjust forms and systems more easily, and the Bureau expects that some providers may not have finished any systems modifications necessary to comply with the 2012 Final Rule, and thus may be

[19] For purposes of assessing the impacts of the 2013 Final Rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (''NAICS'') classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[20] The definition of ''remittance transfer provider'' includes a safe harbor that means that if a person provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer such transfers in the current calendar year, it is deemed not to be providing remittance transfers for a consumer in the normal course of its business, and is thus not a remittance transfer provider. *See* § 1005.30(f)(2).

[21] Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes, http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Effective October 1, 2012.

[22] Many state-licensed money transmitters act through agents. However, the 2012 Final Rule applies to remittance transfer providers and explains, in official commentary, that a person is not deemed to be acting as a provider when it performs activities as an agent on behalf of a provider. Comment 30(f)–1. Furthermore, for the purpose of this analysis, the Bureau assumes that providers, and not their agents, will assume any costs associated with implementing the modifications.

able to incorporate any changes into previously planned work. Furthermore, to the extent any provider elects to provide optional disclosures of non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider, providers may bear some costs in determining these amounts and programming disclosures to allow for the dynamic disclosure of this information. Also, the Bureau expects that many small depository institutions and credit unions are relying on correspondent institutions or other service providers to provide standard disclosure forms; as a result, related costs will often be spread across multiple institutions.

The 2013 Final Rule's elimination of the requirement to disclose non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider may provide meaningful benefits to remittance transfer providers. The benefits include a reduced cost to prepare required disclosures. Furthermore, industry has suggested that due in part to the 2012 Final Rule's third party fee and foreign tax disclosure requirements, some providers might have eliminated or reduced their remittance transfer offerings, such as by not sending to countries where tax or fee information is particularly difficult to obtain, due to the lack of ongoing reliable and complete information sources. By reducing the amount of information needed to provide disclosures, the 2013 Final Rule will encourage more providers (including small entities) to retain their current services (and thus any associated profit, revenue, and customers).

The Bureau expects that, amongst small entities, the revised provisions regarding recipient institution fees will have the largest effect on remittance transfer providers that are depository institutions, credit unions, and broker-dealers that are remittance transfer providers. These types of providers tend to send most or all of their remittances transfers to foreign accounts, for which recipient institution fees may be charged. Furthermore, due to the mechanisms these providers use to send money, they generally have the ability to send transfers to virtually any destination country for which tax research might be required. By contrast, money transmitters that are providers are more likely to send remittance transfers to be received by agents, for which non-covered third-party fees will not be relevant. Furthermore, with some exception, most money transmitters, and particularly small ones, generally send transfers to a limited number of countries and institutions, so the benefits, in avoided costs, of eliminating the requirement that taxes be disclosed may not be as large for money transmitters as for other providers.

D. Incorrect or Insufficient Information

The 2013 Final Rule includes two sets of changes related to errors caused by the sender's provision of incorrect or insufficient information. First, the 2013 Final Rule creates a new exception to the definition of the error for situations in which a sender provides an incorrect account number or recipient institution identifier, and the remittance transfer provider meets certain conditions. Second, the 2013 Final Rule also adjusts the remedy in certain situations in which an error occurred because the sender provided incorrect or insufficient information (other than those covered by the new exception).

The Bureau expects that a number of small remittance transfer providers will be unaffected by the changes regarding the definition of error as they only apply to remittance transfers that are received in accounts. Though some money transmitters send money to be deposited into bank accounts, the Bureau's outreach suggests that, unlike most small depository institutions, credit unions, and broker-dealers, many small money transmitters only send money to be received in cash, and some of those that do send money to be deposited into accounts may be doing so through agent relationships.

With regard to small remittance transfer providers that do send money to accounts at recipient institutions that are not agents, the new exception to the definition of error does not impose any mandatory costs. Under the 2013 Final Rule, certain account number and recipient institution identifier mistakes will no longer generate ''errors'' if the provider satisfied certain conditions enumerated in § 1005.33(h). Instead of satisfying these conditions, providers can continue under the 2012 Final Rule's definition of error.

If remittance transfer providers choose to satisfy the conditions enumerated in § 1005.33(h), they may incur some costs for implementing certain verification procedures pursuant to § 1005.33(h)(2) and changing the terms of their consumer contracts or other communications to provide senders the notice contemplated by § 1005.33(h)(3). However, the Bureau expects that the cost of providing this notice will be modest, particularly because the 2013 Final Rule does not mandate any particular notice, form, or format (apart from requiring that the notice be clear and conspicuous and meeting certain foreign language requirements), and the Bureau expects that many providers already have included any such notice into existing communications or the required prepayment disclosures. While the notice required by § 1005.33(h)(3) must generally be in writing, the Bureau also believes that providers already provide this notice in writing.

The Bureau believes that satisfying the remainder of the conditions in § 1005.33(h) will not impose new costs on remittance transfer providers because their existing practices generally will already satisfy those conditions. In particular, based on outreach, the Bureau believes that that keeping records or other documents that can satisfy the conditions described in § 1005.33(h) will generally match providers' usual and customary practices to serve their customers, to manage their risk, and to satisfy the requirements under the 2012 Final Rule to retain records of the findings of investigations of alleged errors. *See* § 1005.33(g)(2).

In any case, the Bureau expects that remittance transfer providers will only develop their practices to comply with § 1005.33(h), and thus take advantage of the new exception to the definition of error, if doing so will reduce the costs of losses due to account number and recipient institution identifier mistakes by senders or fraud by more than the costs of implementing these practices. The Bureau believes that for most providers, including small ones, the changes to the definition of error likely will provide greater benefits than implementation costs. If the new exception applies, providers will no longer bear the cost of funds that they could not recover if they are able to satisfy the conditions of § 1005.33(h). Providers will further benefit if the 2013 Final Rule reduces the potential for fraudulent account number and recipient institution identifier mistakes made by unscrupulous senders, which providers have cited as a risk under the 2012 Final Rule. By reducing the remedies available in such cases, the 2013 Final Rule will reduce the direct costs of fraud and the indirect costs of fraud prevention and facilitate providers' continued participation in the remittance transfer market, without (or with fewer) new limitations on service. Industry commenters indicated that, at least in part, due to the risk of such fraud under the 2012 Final Rule, providers might exit the market or limit the size or type of transfers sent.

The change regarding remedies for certain errors that occurred because the

sender provided incorrect or insufficient information will also benefit small remittance transfer providers, though the Bureau expects that the benefits would be small because the circumstances covered by the change will arise very infrequently.[23] In instances in which they are applicable, the changes will require a provider to refund the transfer amount unless the sender requested a resend after being informed of the results of the error investigation and the provider agreed to such a resend. Any request to resend the funds will be treated as a new remittance transfer. Similarly, the changes will benefit providers insofar as they may deduct from the amount refunded, or applied towards a new transfer, any fees or taxes actually deducted from the transfer amount by a person other than the provider and thus they will no longer have to bear the cost of these fees and taxes, which previously providers could not pass on to senders. The changes regarding certain instances in which remittance transfer providers resend transactions to correct errors could impose a cost on providers to revise their procedures. Providers may also have to bear costs from the need to adjust their default remedies, procedures for requesting senders' preferred remedies, and error resolution reports, but the Bureau believes these costs will be modest.

E. Effective Date

The 2013 Final Rule will not take effect until October 28, 2013. This change will generally benefit small remittance transfer providers, by delaying the start of any ongoing compliance costs. The additional time might also enable providers (and their vendors) to build solutions that cost less than those that might otherwise have been possible.

F. Cost of Credit for Small Entities

The 2013 Final Rule does not apply to credit transactions or to commercial remittances. Therefore, the Bureau does not expect this rule to increase the cost of credit for small businesses. With a few exceptions, the 2013 Final Rule generally does not change or lowers the cost of compliance for depositories and credit unions, many of which offer small business credit. Any effect of the 2013 Final Rule on small business credit, however, would be highly attenuated. The 2013 Final Rule also generally does not change or lowers the cost of compliance for money transmitters. Money transmitters typically do not extend credit to any entity, including small businesses.

G. Certification

Accordingly, the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) requires that the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a respondent is not required to respond to an information collection unless the collection displays a valid OMB control number. Regulation E, 12 CFR part 1005, contains collections of information that have previously approved by OMB. The Bureau's OMB control number for Regulation E is 3170–0014. Certain provisions of the 2013 Final Rule contain revisions to the information collection requirements as currently approved under OMB No. 3170–0014. The revised information collection requirements as contained in the 2013 Final Rule and identified as such have been submitted to OMB for review under section 3507(d) of the PRA and are not effective until OMB approval is obtained. The unapproved revised information collection requirements are contained in §§ 1005.31(b)(1)(viii), 1005.33(h), and 1005.33(g) of this final rule. Documentation prepared in support of this submission to OMB is available at *www.reginfo.gov*. This documentation contains among other things a description of likely respondents to these information collection requirements and detailed burden analysis. The Bureau will publish a separate notice in the **Federal Register** announcing OMB's action on this submission.

A. Overview

The title of these information collections is Electronic Fund Transfer Act (Regulation E) 12 CFR part 1005. The frequency of collection is on occasion. As described below, the 2013 Final Rule amends portions of the collections of information currently in Regulation E. Some portions of these information collections are required to provide benefits for consumers and are mandatory. However, some portions are voluntary because certain information collections under the 2013 Final Rule would simply give remittance transfer providers optional methods of compliance. Because the Bureau does not collect any information under the 2013 Final Rule, no issue of confidentiality arises. The likely respondents are providers, including small businesses. Respondents are required to retain records for 24 months, but this regulation does not specify the types of records that must be maintained. *See* §§ 1005.13(c) and 1005.33(g)(2).

Under the 2013 Final Rule, the Bureau generally accounts for the paperwork burden associated with Regulation E for the following respondents pursuant to its administrative enforcement authority: Insured depository institutions and insured credit unions with more than $10 billion in total assets, and their depository institution and credit union affiliates (together, ''the Bureau depository respondents''), and certain non-depository remittance transfer providers, such as certain state-licensed money transmitters and broker-dealers (''the Bureau non-depository respondents'').

Using the Bureau's burden estimation methodology, the Bureau estimates that the total one-time burden for the estimated 5,915 respondents potentially affected by the 2013 Final Rule would be approximately 385,000 hours.[24] The Bureau estimates that the ongoing burden to comply with Regulation E would be reduced by approximately 276,000 hours per year by the 2013 Final Rule. The aggregate estimates of total burdens presented in this analysis are based on estimated costs that are averages across respondents. The Bureau expects that the amount of time required to implement the changes for a given remittance transfer provider may

[23] The Bureau expects that remittance transfer providers will generally experience low error rates. Prior to the February Final Rule, the Credit Union National Association reported a rate of less than 1% for international wire ''exceptions.'' In more recent outreach, other industry participants suggested that investigation or exception rates for international wire transfers tend to be between 1 percent and 3 percent of all wire transfers.

[24] The decrease in respondents relative to the PRA analysis for the August Final Rule reflects a change in the number of insured depository institutions and credit unions supervised by the Bureau, a focus on the Bureau's estimate of the number of insured depository institutions and credit unions that will qualify as remittance transfer providers, and a revision by the Bureau of the estimated number of state-licensed money transmitters that offer remittance services. The revised estimate of the number of state-licensed money transmitters that offer remittance services is based on subsequent analysis of publicly available state registration lists and other information about the business practices of licensed entities. The decrease in burden relative to what was previously reported for the 2012 Final Rule from this revision is not included in the change in burden reported here. However, the revised entity counts are used for calculating other changes in burden that will arise from the 2013 Final Rule. The total estimated number of respondents also includes an estimated 162 broker-dealers that may be remittance transfer providers.

vary based on the size, complexity, and practices of the respondent.

For the 153 Bureau depository respondents, the Bureau estimates for the purpose of this PRA analysis that the 2013 Final Rule will increase one-time burden by approximately 9,900 hours and reduce ongoing burden by approximately 7,300 hours per year. For the estimated 300 Bureau non-depository respondents, the Bureau estimates that the 2013 Final Rule will increase one-time burden by approximately 20,000 hours and reduce ongoing burden by 6,300 hours per year.[25] The Bureau and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions under Regulation E, including state-licensed money transmitters. The Bureau has allocated to itself half of its estimated burden to Bureau non-depository respondents, (or approximately 10,000 hours in one-time burden and a reduction in ongoing burden of 3,150 hours) which is based on an estimate of the number of state-licensed money transmitters that are remittance transfer providers. The FTC is responsible for estimating and reporting to OMB its total paperwork burden for the institutions for which it has administrative enforcement authority. It may, but is not required to, use the Bureau's burden estimation methodology.

B. Analysis of Potential Burden

1. Recipient Institution Fees and Foreign Taxes

As described in parts V and VI above, in lieu of disclosing certain recipient institution fees and foreign taxes, remittance transfer providers will be required to bear some cost of modifying their systems to include the disclaimer required by § 1005.31(b)(1)(viii). Effected providers will also have to reprogram systems to conform to the new requirements for calculating ''Other Fees'' (pursuant to § 1005.31(b)(1)(vi)) and the amount to be disclosed (pursuant to § 1005.31(b)(1)(vii)). In addition, certain providers may choose to program their systems to include the option to disclose non-covered third-party fees and taxes collected by a person other than the provider pursuant to § 1005.31(b)(1)(viii). All providers will have to remove references to ''Other Taxes'' from their forms. The Bureau also expects that many depository institutions and credit unions are relying on correspondent institutions or other service providers to provide recipient institution fee and foreign tax information, as well as standard disclosure forms; as a result, any development cost associated with the 2013 Final Rule will be spread across multiple institutions.

Furthermore, the Bureau expects that some remittance transfer providers may not have finished any systems modifications necessary to comply with the 2012 Final Rule, and thus may be able to incorporate any changes into previously accounted-for work. In the interest of providing a conservative estimate, however, the Bureau assumes that all providers will need to modify their systems to calculate disclosures and to add the new disclaimers. The Bureau estimates that making revisions to systems to adjust to the new disclosure requirements will take, on average, 40 hours per provider. Because the forms to be modified are existing forms, the Bureau estimates that adding the disclaimer will require eight hours per form per provider.

On the other hand, the 2013 Final Rule will eliminate remittance transfer providers' ongoing cost of obtaining and updating information on foreign taxes and, for some providers, eliminate the ongoing cost of obtaining and updating information on recipient institution fees. By eliminating these ongoing costs, the Bureau estimates that insured depository institutions and credit unions will save, on average, 48 hours per year and non-depository institutions will save, on average, 21 hours per year. The Bureau cannot estimate the number of providers that will choose to provide optional disclosures of foreign taxes and non-covered third-party fees. The Bureau believes even for such providers there will be significant time savings as providers may choose to focus on heavily trafficked corridors where information may be more easily obtainable.

2. Incorrect or Insufficient Information

As described in parts V and VI above, the Bureau expects that remittance transfer providers that send money to accounts, in order to benefit from the changes to the definition of the term error, may choose to provide senders with notice that if they provide incorrect account numbers, they could lose the transfer amount, and providers may also choose to maintain sufficient records to satisfy, wherever possible, the conditions enumerated in § 1005.33(h) (though no such recordkeeping is required). These enumerated conditions include: Being able to demonstrate facts regarding senders' responsibility for any account number or recipient institution identifier mistake; verification of recipient institution identifiers; the above-referenced notice; the results of an incorrect account number or recipient institution identifier; and the provider's effort to recover funds. In addition, § 1005.33(h) may encourage providers to implement security procedures for verifying account and recipient institution identifiers that they did not previously utilize.

Because this will likely involve modifications to existing communications, the Bureau estimates that providing senders with the notice described above will require a one-time burden of eight hours per remittance transfer provider and will not generate any ongoing burden. With regard to satisfying compliance with the conditions enumerated in § 1005.33(h), the Bureau believes that any related record retention will be a usual and customary practice by providers under the 2012 Final Rule, and that therefore there will be no additional burden associated with these aspects of the 2013 Final Rule. Many commenters indicated that their existing disclosures to consumers already contain a notice of the sort contemplated by this provision.

Under the 2013 Final Rule, to correct an error caused by incorrect or insufficient information provided by a sender, a remittance transfer provider must refund a transfer amount to the sender, unless the sender specifically requests that the provider resend the funds as a new remittance transfer and the provider agrees to do so. When a sender and provider agree to send a new transfer, the procedures for sending that new transfer should not result in any increased burden.[26]

The Bureau also estimates that to reflect the changes regarding certain errors, remittance transfer providers will

[25] The Bureau's estimate of non-depository respondents is based on an estimate of the number of state-licensed money transmitters that are remittance transfer providers. Furthermore, the Bureau notes that while its analysis in the February Final Rule attributed burden to the agents of state-licensed money transmitters, in this case, the Bureau expects that the changes in burden discussed in this PRA analysis will generally be borne only by money transmitters themselves, not their agents. In particular, the Bureau believes that money transmitters will generally gather and prepare recipient institution fee and foreign tax information centrally, rather than requiring their agents to do so. Similarly, the Bureau expects that money transmitters will generally investigate and respond to errors centrally, rather than asking their agents to take responsibility for such functions. Comment 30(f)–1 states that a person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider.

[26] In the December Proposal, the Bureau proposed that providers be permitted to use simplified disclosures that would have contained one additional piece of information that was not otherwise required on existing disclosures. Insofar as the Bureau is not finalizing this part of the December Proposal, the burden allotted to this disclosure is not included in this analysis.

spend, on average, one hour, to update written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to providers, pursuant to § 1005.33(g).

The Bureau expects that the revised remedy for certain errors will also reduce remittance transfer providers' ongoing burden, by eliminating the need to provide both a pre-payment disclosure and a receipt under covered circumstances. However, because the Bureau expects that the covered circumstances will arise very infrequently, the Bureau expects that this burden reduction would be minimal.

In summary, the 2013 Final Rule will result in an increase in one-time burden for CFPB respondents of approximately 20,000 hours and a decrease in ongoing burden for CFPB respondents of 10,000 hours per year. The current total annual burden for OMB No. 3170–0014 is 4,005,122 hours. As a result of the 2013 Final Rule, the new burden for OMB No. 3170–0014 will be 4,014,323 hours.

List of Subjects in 12 CFR Part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Bureau further amends 12 CFR part 1005, as amended February 7, 2012 (77 FR 6194) and August 20, 2012 (77 FR 50244) and delayed January 29, 2013 (78 FR 6025), as set forth below:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b.

Subpart B is also issued under 12 U.S.C. 5601.

Subpart B—Requirements for Remittance Transfers

■ 2. Section 1005.30 is amended by revising the introductory text and adding paragraph (h) to read as follows:

§ 1005.30 Remittance transfer definitions.

Except as otherwise provided, for purposes of this subpart, the following definitions apply:

* * * * *

(h) *Third-party fees.* (1) ''Covered third-party fees.'' The term ''covered third-party fees'' means any fees imposed on the remittance transfer by a person other than the remittance transfer provider except for fees described in paragraph (h)(2) of this section.

(2) ''Non-covered third-party fees.'' The term ''non-covered third-party fees'' means any fees imposed by the designated recipient's institution for receiving a remittance transfer into an account except if the institution acts as an agent of the remittance transfer provider.

■ 3. Section 1005.31 is amended by revising paragraphs (a)(1), (b)(1)(ii), (b)(1)(v), (b)(1)(vi), (b)(1)(vii), (b)(2)(i), (c)(1), (c)(2), (c)(3), (f), and (g)(1), and adding paragraph (b)(1)(viii) to read as follows:

§ 1005.31 Disclosures.

(a) *General form of disclosures*—(1) *Clear and conspicuous.* Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or § 1005.33(h)(3) must be clear and conspicuous. Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or § 1005.33(h)(3) may contain commonly accepted or readily understandable abbreviations or symbols.

* * * * *

(b) * * *

(1) * * *

(ii) Any fees imposed and any taxes collected on the remittance transfer by the provider, in the currency in which the remittance transfer is funded, using the terms ''Transfer Fees'' for fees and ''Transfer Taxes'' for taxes, or substantially similar terms;

* * * * *

(v) The amount in paragraph (b)(1)(i) of this section, in the currency in which the funds will be received by the designated recipient, but only if covered third-party fees are imposed under paragraph (b)(1)(vi) of this section, using the term ''Transfer Amount'' or a substantially similar term. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate;

(vi) Any covered third-party fees, in the currency in which the funds will be received by the designated recipient, using the term ''Other Fees,'' or a substantially similar term. The exchange rate used to calculate any covered third-party fees is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate;

(vii) The amount that will be received by the designated recipient, in the currency in which the funds will be received, using the term ''Total to Recipient'' or a substantially similar term except that this amount shall not include non-covered third party fees or taxes collected on the remittance transfer by a person other than the provider regardless of whether such fees or taxes are disclosed pursuant to paragraph (b)(1)(viii) of this section. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate.

(viii) A statement indicating that non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider may apply to the remittance transfer and result in the designated recipient receiving less than the amount disclosed pursuant to paragraph (b)(1)(vii) of this section. A provider may only include this statement to the extent that such fees or taxes do or may apply to the transfer, using the language set forth in Model Forms A–30(a) through (c) of Appendix A to this part, as appropriate, or substantially similar language. In this statement, a provider also may, but is not required, to disclose any applicable non-covered third-party fees or taxes collected by a person other than the provider. Any such figure must be disclosed in the currency in which the funds will be received, using the language set forth in Model Forms A–30(b) through (d) of Appendix A to this part, as appropriate, or substantially similar language. The exchange rate used to calculate any disclosed non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate;

(2) * * *

(i) The disclosures described in paragraphs (b)(1)(i) through (viii) of this section;

* * * * *

(c) *Specific format requirements*—(1) *Grouping.* The information required by paragraphs (b)(1)(i), (ii), and (iii) of this section generally must be grouped together. The information required by paragraphs (b)(1)(v), (vi), (vii), and (viii) of this section generally must be grouped together. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, generally need not comply with the grouping requirements

of this paragraph, however information required or permitted by paragraph (b)(1)(viii) of this section must be grouped with information required by paragraph (b)(1)(vii) of this section.

(2) *Proximity.* The information required by paragraph (b)(1)(iv) of this section generally must be disclosed in close proximity to the other information required by paragraph (b)(1) of this section. The information required by paragraph (b)(2)(iv) of this section generally must be disclosed in close proximity to the other information required by paragraph (b)(2) of this section. The information required or permitted by paragraph (b)(1)(viii) must be in close proximity to the information required by paragraph (b)(1)(vii) of this section. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, generally need not comply with the proximity requirements of this paragraph, however information required or permitted by paragraph (b)(1)(viii) of this section must follow the information required by paragraph (b)(1)(vii) of this section.

(3) *Prominence and size.* Written disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section must be provided on the front of the page on which the disclosure is printed. Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section that are provided in writing or electronically must be in a minimum eight-point font, except for disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section. Disclosures required by paragraph (b) of this section or permitted by paragraph (b)(1)(viii) of this section that are provided in writing or electronically must be in equal prominence to each other.

* * * * *

(f) *Accurate when payment is made.* Except as provided in § 1005.36(b), disclosures required by this section or permitted by paragraph (b)(1)(viii) of this section must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted by § 1005.32.

(g) *Foreign language disclosures*—(1) *General.* Except as provided in paragraph (g)(2) of this section, disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or § 1005.33(h)(3) must be made in English and, if applicable, either in:

* * * * *

■ 4. Section 1005.32 is amended by revising paragraphs (b)(2)(ii) and (c)(3), adding paragraph (b)(3), revising paragraph (c)(4) and removing paragraph (c)(5) to read as follows:

§ 1005.32 Estimates.

* * * * *

(b) * * *

(2) * * *

(ii) Covered third-party fees described in § 1005.31(b)(1)(vi) may be estimated under paragraph (b)(2)(i) of this section only if the exchange rate is also estimated under paragraph (b)(2)(i) of this section and the estimated exchange rate affects the amount of such fees.

* * * * *

(3) *Permanent exception for optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider.* For disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for applicable non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider, which are permitted to be disclosed under § 1005.31(b)(1)(viii), provided such estimates are based on reasonable sources of information.

(c) * * *

(3) *Covered third-party fees.* (i) *Imposed as percentage of amount transferred.* In disclosing covered third-party fees, as described under § 1005.31(b)(1)(vi), that are a percentage of the amount transferred to the designated recipient, an estimated exchange rate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section, prior to any rounding of the estimated exchange rate.

(ii) *Imposed by the intermediary or final institution.* In disclosing covered third-party fees pursuant to § 1005.31(b)(1)(vi), an estimate must be based on one of the following:

* * * * *

(4) Amount of currency that will be received by the designated recipient. In disclosing the amount of currency that will be received by the designated recipient as required under § 1005.31(b)(1)(vii), an estimate must be based on the information provided in accordance with paragraphs (c)(1) through (3) of this section, as applicable.

■ 5. Section 1005.33 is amended by revising paragraphs (a)(1)(iii), (a)(1)(iv)(B), (c)(2) introductory text, (c)(2)(ii) introductory text, (c)(2)(ii)(A)(*2*) and (c)(2)(ii)(B), redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(iv), and adding paragraphs (a)(1)(iv)(D), (c)(2)(iii) and (h) to read as follows:

§ 1005.33 Procedures for resolving errors.

(a) * * *

(1) * * *

(iii) The failure to make available to a designated recipient the amount of currency disclosed pursuant to § 1005.31(b)(1)(vii) and stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer, unless:

(A) The disclosure stated an estimate of the amount to be received in accordance with § 1005.32(a), (b)(1) or (b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts; or

(B) The failure resulted from extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated; or

(C) The difference results from the application of non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider and the provider provided the disclosure required by § 1005.31(b)(1)(viii).

(iv) * * *

(B) Delays related to the remittance transfer provider's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.,* Office of Foreign Assets Control requirements, or similar laws or requirements;

* * * * *

(D) The sender having provided the remittance transfer provider an incorrect account number or recipient institution identifier for the designated recipient's account or institution, provided that the remittance transfer provider meets the conditions set forth in paragraph (h) of this section;

* * * * *

(c) * * *

(2) *Remedies.* Except as provided in paragraph (c)(2)(iii) of this section, if, following an assertion of an error by a sender, the remittance transfer provider determines an error occurred, the provider shall, within one business day of, or as soon as reasonably practicable after, receiving the sender's instructions regarding the appropriate remedy, correct the error as designated by the sender by:

* * * * *

(ii) Except as provided in paragraph (c)(2)(iii) of this section, in the case of an error under paragraph (a)(1)(iv) of this section

(A) * * *

(*2*) Making available to the designated recipient the amount appropriate to resolve the error. Such amount must be

made available to the designated recipient without additional cost to the sender or to the designated recipient; and

(B) Refunding to the sender any fees imposed and, to the extent not prohibited by law, taxes collected on the remittance transfer;

(iii) In the case of an error under paragraph (a)(1)(iv) of this section that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall refund to the sender the amount of funds provided by the sender in connection with the remittance transfer that was not properly transmitted, or the amount appropriate to resolve the error, within three business days of providing the report required by paragraph (c)(1) or (d)(1) of this section except that the provider may agree to the sender's request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund. The provider may deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempt.

* * * * *

(h) *Incorrect account number or recipient institution identifier provided by the sender.* The exception in paragraph (a)(1)(iv)(D) of this section applies if:

(1) The remittance transfer provider can demonstrate that the sender provided an incorrect account number or recipient institution identifier to the provider in connection with the remittance transfer;

(2) For any instance in which the sender provided the incorrect recipient institution identifier, prior to or when sending the transfer, the provider used reasonably available means to verify that the recipient institution identifier provided by the sender corresponded to the recipient institution name provided by the sender;

(3) The provider provided notice to the sender before the sender made payment for the remittance transfer that, in the event the sender provided an incorrect account number or recipient institution identifier, the sender could lose the transfer amount. For purposes of providing this disclosure, § 1005.31(a)(2) applies to this notice unless the notice is given at the same time as other disclosures required by this subpart for which information is permitted to be disclosed orally or via mobile application or text message, in which case this disclosure may be given in the same medium as those other disclosures;

(4) The incorrect account number or recipient institution identifier resulted in the deposit of the remittance transfer into a customer's account that is not the designated recipient's account; and

(5) The provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.

■ 6. Appendix A to part 1005 is amended as follows:

■ a. Title A–30 is removed and reserved and new titles A–30(a) through A–30(d) are added.

■ b. New Model Forms A–30(a), A–30(b), A–30(c), A–30(d) are added, and Model Forms A–31 through A–41 are revised.

The additions and revisions read as follows:

Appendix A to Part 1005—Model Disclosures and Forms

* * * * *

A–30(a)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer where non-covered third-party fees and foreign taxes may apply (§ 1005.31(b)(1))

A–30(b) —Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for non-covered third-party fees (§ 1005.31(b)(1) and § 1005.32(b)(3))

A–30(c)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for foreign taxes (§ 1005.31(b)(1) and § 1005.32(b)(3))

A–30(d)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency, including a disclaimer with estimates for non-covered third-party fees and foreign taxes (§ 1005.31(b)(1) and § 1005.32(b)(3))

* * * * *

A–30(a)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

A–30(b)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank (Est. 40 MXN).

A–30(c)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to foreign taxes (Est. 10 MXN).

A–30(d)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank (Est. 30 MXN) and foreign taxes (Est. 10 MXN).

A–31—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

RECEIPT

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2014

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–32—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2014

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–33—Model Form for Pre-Payment Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Transfer Amount:	$100.00
Other Fees:	-$4.00
Total to Recipient:	$96.00

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

A–34—Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

RECEIPT

SENDER:	RECIPIENT:
Pat Jones	Carlos Gomez
100 Anywhere Street	106 Calle XXX
Anytown, Anywhere 54321	Mexico City
301-555-1212	Mexico
	PICK-UP LOCATION:
	ABC Company
	65 Avenida YYY
	Mexico City
	Mexico

Confirmation Code:	ABC 123 DEF 456
Date Available:	March 4, 2014
Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00
Transfer Amount:	$100.00
Other Fees:	-$4.00
Total to Recipient:	$96.00

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–35—Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
301-555-1212

RECIPIENT:
Carlos Gomez
106 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code:	ABC 123 DEF 456
Date Available:	March 4, 2014
Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00
Transfer Amount:	$100.00
Other Fees:	-$4.00
Total to Recipient:	$96.00

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–36—Model Form for Error Resolution and Cancellation Disclosures (Long) (§ 1005.31(b)(4))

What to do if you think there has been an error or problem:

If you think there has been an error or problem with your remittance transfer:

- Call us at [insert telephone number][; or]
- Write us at [insert address][; or]
- [E-mail us at [insert electronic mail address]].

You must contact us within 180 days of the date we promised to you that funds would be made available to the recipient. When you do, please tell us:

(1) Your name and address [or telephone number];

(2) The error or problem with the transfer, and why you believe it is an error or problem;

(3) The name of the person receiving the funds, and if you know it, his or her telephone number or address; [and]

(4) The dollar amount of the transfer; [and

(5) The confirmation code or number of the transaction.]

We will determine whether an error occurred within 90 days after you contact us and we will correct any error promptly. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents we used in our investigation.

What to do if you want to cancel a remittance transfer:
You have the right to cancel a remittance transfer and obtain a refund of all funds paid to us, including any fees. In order to cancel, you must contact us at the [phone number or e-mail address] above within 30 minutes of payment for the transfer.

When you contact us, you must provide us with information to help us identify the transfer you wish to cancel, including the amount and location where the funds were sent. We will refund your money within three business days of your request to cancel a transfer as long as the funds have not already been picked up or deposited into a recipient's account.

A–37—Model Form for Error Resolution and Cancellation Disclosures (Short) (§ 1005.31(b)(2)(iv) and (b)(2)(vi))

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at [insert telephone number] or [insert website]. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about [insert name of remittance transfer provider], contact:

A–38—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency—Spanish (§ 1005.31(b)(1))

ABC Company

1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2014

ESTE NO ES UN RECIBO

Cantidad de Envío:	$100.00
Cargos por Envío:	+$7.00
Impuestos de Envío:	+$3.00
Total:	$110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otros Cargos por Envío:	-30.00 MXN
Total al Destinatario:	1,197.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.

A–39—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency—Spanish (§ 1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2014

RECIBO

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Ciudad de Mexico, D.F.
Mexico

PUNTO DE PAGO:
ABC Company
65 Avenida YYY
Ciudad de Mexico, D.F.
Mexico

Código de Confirmación: ABC 123 DEF 456

Fecha Disponible: 4 de marzo de 2014

Cantidad de Envío:	$100.00
Cargos por Envío:	+$7.00
Impuestos de Envío:	+$3.00
Total:	$110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otros Cargos por Envío:	-30.00 MXN
Total al Destinatario:	1,197.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.

Usted tiene el derecho de discutir errores en su transaccion. Si cree que hay un error, contáctenos dentro de 180 días al 800-123-4567 o www.abccompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.

Puede cancelar el envío y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.

Para preguntas o presentar una queja sobre ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–40—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency—Spanish (§ 1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2014

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Ciudad de Mexico, D.F.
Mexico

PUNTO DE PAGO:
ABC Company
65 Avenida YYY
Ciudad de Mexico, D.F.
Mexico

Código de Confirmación: ABC 123 DEF 456

Fecha Disponible: 4 de marzo de 2014

Cantidad de Envío:	$100.00
Cargos por Envío:	+$7.00
Impuestos de Envío:	+$3.00
Total:	$110.00

Tipo de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otros Cargos por Envío:	-30.00 MXN
Total al Destinatario:	1,197.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.

Usted tiene el derecho de discutir errores en su transaccion. Si cree que hay un error, contáctenos dentro de 180 días al 800-123-4567 o www.abccompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.

Puede cancelar el envío y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.

Para preguntas o presentar una queja sobre ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–41—Model Form for Error Resolution and Cancellation Disclosures (Long)—Spanish (§ 1005.31(b)(4))

Lo que usted debe hacer si cree que hay un error o problema:

Si cree que hay un error o problema con su envío de dinero:

- Llámenos a [inserte número de teléfono][; o]
- Escríbanos a [inserte dirección][; o]
- [Envíenos un correo electrónico a [inserte dirección de correo electrónico]].

Debe contactarnos dentro de 180 días a partir de la fecha en que se le prometió que los fondos estarían disponibles al destinatario. Cuando se comunique con nosotros, por favor provea la siguiente información:

(1) Su nombre y dirección [o número de teléfono];

(2) El error o problema con su envío de dinero, y por qué cree que hay un error o problema;

(3) El nombre del destinatario, y si lo sabe, su número de teléfono o dirección; [y]

(4) El monto del envío en dólares; [y

(5) El código de confirmación o el número de la transacción.]

Nosotros determinaremos si ocurrió un error dentro de 90 días después de que usted nos contacte y lo corregiremos rápidamente. Le diremos los resultados dentro de tres días hábiles después de terminar nuestra investigación. Si decidimos que no hubo un error, le enviaremos a usted una explicación escrita. Usted puede pedir copias de los documentos que usamos en nuestra investigación.

Lo que usted debe hacer si quiere cancelar un envío de dinero:

Tiene el derecho de cancelar un envío de dinero y obtener un reembolso de todo el dinero, incluyendo tarifas o gastos que usted nos pagó. Para cancelar debe contactarnos al [número de teléfono o dirección de correo electrónico] que se encuentra arriba dentro de 30 minutos de haber realizado el pago para el envío de dinero.

Cuando nos contacte, debe proveernos información que nos ayudará a identificar el envío de dinero que quiere cancelar, incluyendo la cantidad del envío y el lugar adonde fue enviado. Le reembolsaremos su dinero dentro de tres días hábiles de su petición de cancelar, a no ser que los fondos hayan sido recogidos o depositados en la cuenta del destinatario.

* * * * *

■ 7. In Supplement I to Part 1005—Official Interpretations:
■ A. Under *Section 1005.30:*
■ i. Under comment 30(c), paragraph 1 is revised.
■ ii. Comment 30(h) is added.
■ B. Under *Section 1005.31:*
■ i. Under comment 31(b), paragraphs 1 and 2 are revised.
■ ii. Under comment 31(b)(1), paragraphs 1, 2, and 3 are revised.
■ iii. The heading of comment 31(b)(1)(vi) is revised.
■ iv. Under newly designated comment 31(b)(1)(vi), paragraph 1 is revised and paragraph 2 is removed.
■ v. Under comment 31(b)(1)(vii), paragraph 1 is revised.
■ vi. Comment 31(b)(1)(viii) is added.
■ vii. Under comment 31(c)(1), paragraph 1 is revised.

■ viii. Under comment 31(c)(4), paragraph 2.xi.is added.
■ ix. Under comment 31(f), paragraph 1 is revised.
■ C. Under *Section 1005.32 Estimates:*
■ i. Under comment 32(a)(1), paragraphs 1, 2.ii, and 3.ii. are revised, and paragraphs 2.iii and 3.iii are removed.
■ ii. Under comment 32(b)(2), paragraph 1 is revised.
■ iii. Comment 32(b)(3) is added.
■ iv. The heading of comment 32(c)(3) is revised.
■ v. Comment 32(c)(4) is removed.
■ D. Under *Section 1005.33:*
■ i. Under comment 33(a):
■ a. Paragraphs 7 and 8 are redesignated as paragraphs 9 and 10.
■ b. Paragraphs 3.ii, 3.iii, 4 and newly redesignated paragraph 10 are revised.
■ c. Paragraphs 3.vi, 7, and 8 are added.
■ ii. Under comment 33(c), paragraphs 2, 3, 4 and 5 are revised, and paragraphs 11 and 12 are added.
■ iii. Comment 33(h) is added.
■ E. Under *Section 1005.36:*
■ i. Under comment *36(a)(2),* paragraph 1 is revised.
■ G. Under Subheading Appendix A, paragraph 2. and paragraph 4. are revised.
■ The additions and revisions read as follows:

Supplement I to Part 1005—Official Interpretations

* * * * *

■ Section 1005.30—Remittance Transfer Definitions

* * * * *

30(c) Designated Recipient

1. *Person.* A designated recipient can be either a natural person or an organization, such as a corporation. *See* § 1005.2(j) (definition of person). The designated recipient is identified by the name of the person provided by the sender to the remittance transfer provider and disclosed by the provider to the sender pursuant to § 1005.31(b)(1)(iii).

* * * * *

30(h) Third-Party Fees

1. *Fees imposed on the remittance transfer.* Fees imposed on the remittance transfer by a person other than the remittance transfer provider include only those fees that are charged to the designated recipient and are specifically related to the remittance transfer. For example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt are not fees imposed on the remittance transfer because these charges are not specifically related to the remittance transfer. Account fees are also not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Where an incoming remittance transfer results in a balance increase that triggers a monthly maintenance fee, that fee is not specifically related to a remittance transfer. Similarly, fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount of the transaction or the amount that will be received by the designated recipient are not fees imposed on the remittance transfer. For example, an interchange fee that is charged to a provider when a sender uses a credit or debit card to pay for a remittance transfer is not a fee imposed upon the remittance transfer. Fees that specifically relate to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. For example, where an institution charges an incoming transfer fee on most customers' accounts, but not on preferred accounts, such a fee is nonetheless specifically related to a remittance transfer. Similarly, if the institution assesses a fee for every transfer beyond the fifth received each month, such a fee would be specifically related to the remittance transfer regardless of how many remittance transfers preceded it that month.

2. *Covered third-party fees.* i. Under § 1005.30(h)(1), a covered third-party fee means any fee that is imposed on the remittance transfer by a person other than the remittance transfer provider that is not a non-covered third-party fee.

ii. Examples of covered third-party fees include:

A. Fees imposed on a remittance transfer by intermediary institutions in connection with a wire transfer (sometimes referred to as ''lifting fees'').

B. Fees imposed on a remittance transfer by an agent of the provider at pick-up for receiving the transfer.

3. *Non-covered third-party fees.* Under § 1005.30(h)(2), a non-covered third-party fee means any fee imposed by the designated recipient's institution for receiving a remittance transfer into an account except if such institution acts as the agent of the remittance transfer provider. For example, a fee imposed by the designated recipient's institution for receiving an incoming transfer into an account is a non-covered third-party fee, provided such institution is not acting as the agent of the remittance transfer provider. *See also* comment 31(b)(1)(viii)–1. Furthermore, designated recipient's account in § 1005.30(h)(2) refers to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient's account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

* * * * *

Section 1005.31—Disclosures

* * * * *

31(b) Disclosure Requirements

1. *Disclosures provided as applicable.* Disclosures required by § 1005.31(b) need only be provided to the extent applicable. A remittance transfer provider may choose to omit an item of information required by § 1005.31(b) if it is inapplicable to a particular transaction. Alternatively, for disclosures required by § 1005.31(b)(1)(i) through (vii), a provider may disclose a term and state that an amount or item is ''not applicable,'' ''N/A,'' or ''None.'' For example, if fees or taxes are not imposed in connection with a particular transaction, the provider need not provide the disclosures about fees and taxes generally required by § 1005.31(b)(1)(ii), the disclosures about covered third-party fees generally required by § 1005.31(b)(1)(vi), or the disclaimers about non-covered third-party fees and taxes collected by a person other than the provider generally required by § 1005.31(b)(1)(viii). Similarly, a Web site need not be disclosed if the provider does not maintain a Web site. A provider need not provide the exchange rate disclosure required by § 1005.31(b)(1)(iv) if a recipient receives funds in the currency in which the remittance transfer is funded, or if funds are delivered into an account denominated in the currency in which the remittance transfer is funded. For example, if a sender in the United States sends funds from an account denominated in Euros to an account in France denominated in Euros, no exchange rate would need to be provided. Similarly, if a sender funds a remittance transfer in U.S. dollars and requests that a remittance transfer be delivered to the recipient in U.S. dollars, a provider need not disclose an exchange rate.

2. *Substantially similar terms, language, and notices.* Certain

disclosures required by § 1005.31(b) must be described using the terms set forth in § 1005.31(b) or substantially similar terms. Terms may be more specific than those provided. For example, a remittance transfer provider sending funds may describe fees imposed by an agent at pick-up as ''Pick-up Fees'' in lieu of describing them as ''Other Fees.'' Foreign language disclosures required under § 1005.31(g) must contain accurate translations of the terms, language, and notices required by § 1005.31(b) or permitted by § 1005.31(b)(1)(viii) and § 1005.33(h)(3).

31(b)(1) Pre-Payment Disclosures

1. *Fees and taxes.* i. Taxes collected on the remittance transfer by the remittance transfer provider include taxes collected on the remittance transfer by a State or other governmental body. A provider need only disclose fees imposed or taxes collected on the remittance transfer by the provider in § 1005.31(b)(1)(ii), as applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider would only disclose applicable transfer fees. *See* comment 31(b)–1. If both fees and taxes are imposed, the fees and taxes must be disclosed as separate, itemized disclosures. For example, a provider would disclose all transfer fees using the term ''Transfer Fees'' or a substantially similar term and would separately disclose all transfer taxes using the term ''Transfer Taxes'' or a substantially similar term.

ii. The fees and taxes required to be disclosed by § 1005.31(b)(1)(ii) include all fees imposed and all taxes collected on the remittance transfer by the provider. For example, a provider must disclose any service fee, any fees imposed by an agent of the provider at the time of the transfer, and any State taxes collected on the remittance transfer at the time of the transfer. Fees imposed on the remittance transfer by the provider required to be disclosed under § 1005.31(b)(1)(ii) include only those fees that are charged to the sender and are specifically related to the remittance transfer. *See also* comment 30(h)–1. In contrast, the fees required to be disclosed by § 1005.31(b)(1)(vi) are any covered third-party fees as defined in § 1005.30(h)(1).

iii. The term used to describe the fees imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and the term used to describe covered third-party fees under § 1005.31(b)(1)(vi) must differentiate between such fees. For example the terms used to describe fees disclosed under § 1005.31(b)(1)(ii) and (vi) may not both be described solely as ''Fees.''

2. *Transfer amount.* Sections 1005.31(b)(1)(i) and (v) require two transfer amount disclosures. First, under § 1005.31(b)(1)(i), a provider must disclose the transfer amount in the currency in which the remittance transfer is funded to show the calculation of the total amount of the transaction. Typically, the remittance transfer is funded in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if the remittance transfer is funded, for example, from a Euro-denominated account, the transfer amount would be expressed in Euros. Second, under § 1005.31(b)(1)(v), a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese yen. However, this second transfer amount need not be disclosed if covered third-party fees as described under § 1005.31(b)(1)(vi) are not imposed on the remittance transfer. The terms used to describe each transfer amount should be the same.

3. *Exchange rate for calculation.* The exchange rate used to calculate the transfer amount in § 1005.31(b)(1)(v), the covered third-party fees in § 1005.31(b)(1)(vi), the amount received in § 1005.31(b)(1)(vii), and the optional disclosures of non-covered third-party fees and other taxes permitted by § 1005.31(b)(1)(viii) is the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to § 1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.9484 Mexican pesos. Similarly, if a provider estimates pursuant to § 1005.32 that one U.S. dollar exchanges for 11.9483 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to § 1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.95 Mexican pesos (Estimated). If an exchange rate need not be rounded, a provider must use that exchange rate to calculate these disclosures. For example, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, a provider must calculate these disclosures using this exchange rate.

* * * * *

31(b)(1)(vi) Disclosure of Covered Third-Party Fees

1. *Fees disclosed in the currency in which the funds will be received.* Section 1005.31(b)(1)(vi) requires the disclosure of covered third-party fees in the currency in which the funds will be received by the designated recipient. A covered third-party fee described in § 1005.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider must calculate the fee to be disclosed under § 1005.31(b)(1)(vi) in the currency of receipt using the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. For example, an intermediary institution involved in sending an international wire transfer funded in U.S. dollars may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient's account in Euros. In this case, the provider would disclose the covered third-party fee to the sender expressed in Euros, calculated using the exchange rate disclosed under § 1005.31(b)(1)(iv), prior to any rounding of the exchange rate. For purposes of § 1005.31(b)(1)(v), (vi), and (vii), if a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider may provide the disclosures required in § 1005.31(b)(1)(v), (vi), and (vii) in U.S. dollars, even if the account is actually denominated in Mexican pesos and the funds are subsequently converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

31(b)(1)(vii) Amount Received

1. Amount received. The remittance transfer provider is required to disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. The amount received must reflect the exchange rate, all fees imposed and all taxes collected on the remittance transfer by the remittance transfer provider, as well as any covered third-party fees required to be disclosed by § 1005.31(b)(1)(vi). The disclosed

amount received must be reduced by the amount of any fee or tax—except for a non-covered third-party fee or tax collected on the remittance transfer by a person other than the provider—that is imposed on the remittance transfer that affects the amount received even if that amount is imposed or itemized separately from the transaction amount.

31(b)(1)(viii) Statement When Additional Fees and Taxes May Apply

1. *Required disclaimer when non-covered third-party fees and taxes collected by a person other than the provider may apply.* If non-covered third-party fees or taxes collected by a person other than the provider apply to a particular remittance transfer or if a provider does not know if such fees or taxes may apply to a particular remittance transfer, § 1005.31(b)(1)(viii) requires the provider to include the disclaimer with respect to such fees and taxes. Required disclosures under § 1005.31(b)(1)(viii) may only be provided to the extent applicable. For example, if the designated recipient's institution is an agent of the provider and thus, non-covered third-party fees cannot apply to the transfer, the provider must disclose all fees imposed on the remittance transfer and may not provide the disclaimer regarding non-covered third-party fees. In this scenario, the provider may only provide the disclaimer regarding taxes collected on the remittance transfer by a person other than the provider, as applicable. *See* Model Form A–30(c).

2. *Optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider.* When a remittance transfer provider knows the non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider that will apply to a particular transaction, § 1005.31(b)(1)(viii) permits the provider to disclose the amount of such fees and taxes. Section 1005.32(b)(3)–1 additionally permits a provider to disclose an estimate of such fees and taxes, provided any estimates are based on reasonable source of information. *See* comment 32(b)(3). For example, a provider may know that the designated recipient's institution imposes an incoming wire fee for receiving a transfer. Alternatively, a provider may know that foreign taxes will be collected on the remittance transfer by a person other than the remittance transfer provider. In these examples, the provider may choose, at its option, to disclose the amounts of the relevant recipient institution fee and tax as part of the information disclosed pursuant to § 1005.31(b)(1)(viii). The provider must not include that fee or tax in the amount disclosed pursuant to § 1005.31(b)(1)(vi) or (b)(1)(vii). Fees and taxes disclosed under § 1005.31(b)(1)(viii) must be disclosed in the currency in which the funds will be received. *See* comment 31(b)(1)(vi)–1. Estimates of any non-covered third-party fees and any taxes collected on the remittance transfer by a person other than the provider must be disclosed in accordance with § 1005.32(b)(3).

* * * * *

31(c)(1) Grouping

1. *Grouping.* Information is grouped together for purposes of subpart B if multiple disclosures are in close proximity to one another and a sender can reasonably calculate the total amount of the transaction and the amount that will be received by the designated recipient. Model Forms A–30(a)–(d) through A–35 in Appendix A illustrate how information may be grouped to comply with the rule, but a remittance transfer provider may group the information in another manner. For example, a provider could provide the grouped information as a horizontal, rather than a vertical, calculation. A provider could also send multiple text messages sequentially to provide the full disclosure.

31(c)(4) Segregation

* * * * *

2. *Directly related.* * * *

* * * * *

xi. Disclosure of any non-covered third-party fees and any taxes collected by a person other than the provider pursuant to § 1005.31(b)(1)(viii).

* * * * *

31(f) Accurate When Payment Is Made

1. *No guarantee of disclosures provided before payment.* Except as provided in § 1005.36(b), disclosures required by § 1005.31(b) or permitted by § 1005.31(b)(1)(viii) must be accurate when a sender makes payment for the remittance transfer. A remittance transfer provider is not required to guarantee the terms of the remittance transfer in the disclosures required or permitted by § 1005.31(b) for any specific period of time. However, if any of the disclosures required by § 1005.31(b) or permitted by § 1005.31(b)(1)(viii) are not accurate when a sender makes payment for the remittance transfer, a provider must give new disclosures before accepting payment.

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Section 1005.32—Estimates

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32(a) Temporary Exception for Insured Institutions

32(a)(1) General

1. *Control.* For purposes of this section, an insured institution cannot determine exact amounts ''for reasons beyond its control'' when a person other than the insured institution or with which the insured institution has no correspondent relationship sets the exchange rate required to be disclosed under § 1005.31(b)(1)(iv) or imposes a covered third-party fee required to be disclosed under § 1005.31(b)(1)(vi). For example, if an insured institution has a correspondent relationship with an intermediary financial institution in another country and that intermediary institution sets the exchange rate or imposes a fee for remittance transfers sent from the insured institution to the intermediary institution, then the insured institution must determine exact amounts for the disclosures required under § 1005.31(b)(1)(iv) or (vi), because the determination of those amounts are not beyond the insured institution's control.

2. * * *

ii. *Covered third-party fees.* An insured institution cannot determine the exact covered third-party fees to disclose under § 1005.31(b)(1)(vi) if an intermediary institution with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee.

3. * * *

ii. *Covered third-party fees.* An insured institution can determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) if it has agreed upon the specific fees with an intermediary correspondent institution, and this correspondent institution is the only institution in the transmittal route to the designated recipient's institution.

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32(b) Permanent Exceptions

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32(b)(2) Permanent Exceptions for Transfers Scheduled Before the Date of Transfer

1. *Fixed amount of foreign currency.* The following is an example of when and how a remittance transfer provider may disclose estimates for remittance transfers scheduled five or more business days before the date of transfer where the provider agrees to the sender's request to fix the amount to be transferred in a currency in which the

transfer will be received and not the currency in which it was funded. If on February 1, a sender schedules a 1000 Euro wire transfer to be sent from the sender's bank account denominated in U.S. dollars to a designated recipient on February 15, § 1005.32(b)(2) allows the provider to estimate the amount that will be transferred to the designated recipient (*i.e.,* the amount described in § 1005.31(b)(1)(i)), any fees imposed or taxes collected on the remittance transfer by the provider (if based on the amount transferred) (*i.e.,* the amount described in § 1005.31(b)(1)(ii)), and the total amount of the transaction (*i.e.,* the amount described in § 1005.31(b)(1)(iii)). The provider may also estimate any covered third-party fees if the exchange rate is also estimated and the estimated exchange rate affects the amount of fees (as allowed by § 1005.32(b)(2)(ii)).

32(b)(3) Permanent Exception for Optional Disclosure of Non-Covered Third-Party Fees and Taxes Collected on the Remittance Transfer by a Person Other Than the Provider

1. *Reasonable sources of information.* Pursuant to § 1005.32(b)(3) a remittance transfer provider may estimate applicable non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider using reasonable sources of information. Reasonable sources of information may include, for example: information obtained from recent transfers to the same institution or the same country or region; fee schedules from the recipient institution; fee schedules from the recipient institution's competitors; surveys of recipient institution fees in the same country or region as the recipient institution; information provided or surveys of recipient institutions' regulators or taxing authorities; commercially or publicly available databases, services or sources; and information or resources developed by international nongovernmental organizations or intergovernmental organizations.

* * * * *

32(c)(3) Covered Third-Party Fees

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Section 1005.33—Procedures for Resolving Errors

33(a) Definition of Error

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3. * * *

ii. A consumer requests to send funds to a relative in Colombia to be received in local currency. The remittance transfer provider provides the sender a receipt stating an amount of currency that will be received by the designated recipient, which does not reflect the additional foreign taxes that will be collected in Colombia on the transfer but does include the statement required by § 1005.31(b)(1)(viii). If the designated recipient will receive less than the amount of currency disclosed on the receipt due solely to the additional foreign taxes that the provider was not required to disclose, no error has occurred.

iii. Same facts as in ii., except that the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the receiving agent in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed in the receipt due to the additional covered third-party fees, an error has occurred.

* * * * *

vi. A sender requests that his bank send US$120 to a designated recipient's account at an institution in a foreign country. The foreign institution is not an agent of the provider. Only US$100 is deposited into the designated recipient's account because the recipient institution imposed a US$20 incoming wire fee and deducted the fee from the amount transferred. Because this fee is a non-covered third-party fee that the provider is not required to disclose under § 1005.31(b)(1)(vi), no error has occurred if the provider provided the disclosure required by § 1005.31(b)(1)(viii).

4. *Incorrect amount of currency received—extraordinary circumstances.* Under § 1005.33(a)(1)(iii)(B), a remittance transfer provider's failure to make available to a designated recipient the amount of currency disclosed pursuant to § 1005.31(b)(1)(vii) and stated in the disclosure provided pursuant to § 1005.31(b)(2) or (3) for the remittance transfer is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated under § 1005.33(a)(1)(iii)(B) include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of some of the funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or foreign taxes unknown at the time the receipt or combined disclosure is provided under § 1005.31(b)(2) or (3).

* * * * *

7. *Sender account number or recipient institution identifier error.* The exception in § 1005.33(a)(1)(iv)(D) applies where a sender gives the remittance transfer provider an incorrect account number or recipient institution identifier and all five conditions in § 1005.33(h) are satisfied. The exception does not apply, however, where the failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information provided by the sender other than an incorrect account number or recipient institution identifier, such as an incorrect name of the recipient institution.

8. *Account number or recipient institution identifier.* For purposes of the exception in § 1005.33(a)(1)(iv)(D), the terms account number and recipient institution identifier refer to alphanumerical account or institution identifiers other than names or addresses, such as account numbers, routing numbers, Canadian transit numbers, International Bank Account Numbers (IBANs), Business Identifier Codes (BICs)) and other similar account or institution identifiers used to route a transaction. In addition and for purposes of this exception, the term designated recipient's account in § 1005.30(h)(2) refers to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient's account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

* * * * *

10. *Change from disclosure made in reliance on sender information.* Under the commentary accompanying § 1005.31, the remittance transfer provider may rely on the sender's representations in making certain disclosures. *See, e.g.,* comments 31(b)(1)(iv)–1 and 31(b)(1)(vi)–1. For example, suppose a sender requests U.S. dollars to be deposited into an account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient's account is actually denominated in local currency and the recipient account-holding institution must convert the remittance transfer into local currency in order to deposit

the funds and complete the transfer, the change in currency does not constitute an error pursuant to § 1005.33(a)(2)(iv).

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33(c) Time Limits and Extent of Investigation

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2. *Incorrect or insufficient information provided for transfer.* The remedy in § 1005.33(c)(2)(iii) applies if a remittance transfer provider's failure to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer, such as by erroneously identifying the designated recipient's address or by providing insufficient information such that the entity distributing the funds cannot identify the correct designated recipient. A sender is not considered to have provided incorrect or insufficient information for purposes of § 1005.33(c)(2)(iii) if the provider discloses the incorrect location where the transfer may be picked up, gives the wrong confirmation number/code for the transfer, or otherwise miscommunicates information necessary for the designated recipient to pick-up the transfer. The remedies in § 1005.33(c)(2)(iii) do not apply if the sender provided an incorrect account number or recipient institution identifier and the provider has met the requirements of § 1005.33(h) because under § 1005.33(a)(1)(iv)(D) no error would have occurred. *See* § 1005.33(a)(1)(iv)(D) and comment 33(a)–7.

3. *Designation of requested remedy.* Under § 1005.33(c)(2)(ii), the sender may generally choose to obtain a refund of funds that were not properly transmitted or delivered to the designated recipient or, request redelivery of the amount appropriate to correct the error at no additional cost unless the error is determined to have occurred because the sender provided incorrect or insufficient information. Upon receiving the sender's request, the remittance transfer provider shall correct the error within one business day, or as soon as reasonably practicable, applying the same exchange rate, fees, and taxes stated in the disclosure provided under § 1005.31(b)(2) or (3), if the sender requests delivery of the amount appropriate to correct the error and the error did not occur because the sender provided incorrect or insufficient information. The provider may also request that the sender indicate the preferred remedy at the time the sender provides notice of the error although if provider does so, it should indicate that the if the sender chooses a resend at the time, the remedy may be unavailable if the error occurred because the sender provided incorrect or insufficient information. However, if the sender does not indicate the desired remedy at the time of providing notice of error, the remittance transfer provider must notify the sender of any available remedies in the report provided under § 1005.33(c)(1) or (d)(1) if the provider determines an error occurred.

4. *Default remedy.* Unless the sender provided incorrect or insufficient information and § 1005.33(c)(2)(iii) applies, the remittance transfer provider may set a default remedy that the provider will provide if the sender does not designate a remedy within a reasonable time after the sender receives the report provided under § 1005.33(c)(1). A provider that permits a sender to designate a remedy within 10 days after the provider has sent the report provided under § 1005.33(c)(1) or (d)(1) before imposing the default remedy is deemed to have provided the sender with a reasonable time to designate a remedy. In the case a default remedy is provided, the provider must correct the error within one business day, or as soon as reasonably practicable, after the reasonable time for the sender to designate the remedy has passed, consistent with § 1005.33(c)(2).

5. *Form of refund.* For a refund provided under § 1005.33(c)(2)(i)(A), (c)(2)(ii)(A)(1), (c)(2)(ii)(B), or (c)(2)(iii), a remittance transfer provider may generally, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the appropriate amount. However, if a sender initially provided cash for the remittance transfer, a provider may issue a refund by check. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

* * * * *

11. *Procedure for sending a new remittance transfer after a sender provides incorrect or insufficient information.* Section 1005.33(c)(2)(iii) generally requires a remittance transfer provider to refund the transfer amount to the sender even if the sender's previously designated remedy was a resend or if the provider's default remedy in other circumstances is a resend. However, if before the refund is processed, the sender receives notice pursuant to § 1005.33(c)(1) or (d)(1) that an error occurred because the sender provided incorrect or insufficient information and then requests that the provider send the remittance transfer again, and the provider agrees to that request, § 1005.33(c)(2)(iii) requires that the request be treated as a new remittance transfer and the provider must provide new disclosures in accordance with § 1005.31 and all other applicable provisions of subpart B. However, § 1005.33(c)(2)(iii) does not obligate the provider to agree to a sender's request to send a new remittance transfer.

12. *Determining amount of refund.* Section 1005.33(c)(2)(iii) permits the provider to deduct from the amount refunded, or applied towards a new transfer, any fees or taxes actually deducted from the transfer amount by a person other than the provider as part of the first unsuccessful remittance transfer attempt or that were deducted in the course of returning the transfer amount to the provider following a failed delivery. However, a provider may not deduct those fees and taxes that will ultimately be refunded to the provider. When the provider deducts fees or taxes from the amount refunded pursuant to § 1005.33(c)(2)(iii), the provider must inform the sender of the deduction as part of the notice required by either § 1005.33(c)(1) or (d)(1) and the reason for the deduction. The following examples illustrate these concepts.

i. A sender instructs a remittance transfer provider to send US$100 to a designated recipient in local currency, for which the provider charges a transfer fee of US$10 and its correspondent imposes a fee of US$15. The sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer as requested. Once the provider determines that an error occurred because the sender provided incorrect or insufficient information, the provider must provide the report required by § 1005.33(c)(1) or (d)(1) and inform the sender, pursuant to § 1005.33(c)(1) or (d)(1), that it will refund US$85 to the sender within three business days unless the sender chooses to apply the US$85 towards a new remittance transfer. The provider is required to refund its own $10 fee but not the US$15 fee imposed by the correspondent (unless the $15 will be

refunded to the provider by the correspondent).

ii. A sender instructs a remittance transfer provider to send US$100 to a designated recipient in a foreign country, for which the provider charges a transfer fee of US$10 (and thus the sender pays the provider US$110) and an intermediary institution charges a lifting fee of US$5, such that the designated recipient is expected to receive only US$95, as indicated in the receipt. If an error occurs because the sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer by the date of availability stated in the disclosure provided to the sender for the remittance transfer under § 1005.31(b)(2) or (3), the provider is required to refund, or reapply if requested and the provider agrees, $105 unless the intermediary institution refunds to the provider the US$5 fee. If the sender requests to have the transfer amount applied to a new remittance transfer pursuant to § 1005.33(c)(2)(iii) and provides the corrected or additional information, and the remittance transfer provider agrees to a resend remedy, the remittance transfer provider may charge the sender another transfer fee of US$10 to send the remittance transfer again with the corrected or additional information necessary to complete the transfer. Insofar as the resend is an entirely new remittance transfer, the provider must provide a prepayment disclosure and receipt or combined disclosure in accordance with, among other provisions, the timing requirements of § 1005.31(f) and the cancellation provision of § 1005.34(a).

iii. In connection with a remittance transfer, a provider imposes a $15 tax that it then remits to a State taxing authority. An error occurs because the sender provided incorrect or insufficient information that resulted in non-delivery of the transfer to the designated recipient. The provider may deduct $15 from the amount it refunds to the sender pursuant to § 1005.33(c)(2)(iii) unless the relevant tax law will result in the $15 tax being refunded to the provider by the State taxing authority because the transfer was not completed.

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33(h) Incorrect Account Number Supplied

1. *Reasonable methods of verification.* When a sender provides an incorrect recipient institution identifier, § 1005.33(h)(2) limits the exception in § 1005.33(a)(1)(iv)(D) to situations where the provider used reasonably available means to verify that the recipient institution identifier provided by the sender did correspond to the recipient institution name provided by the sender. Reasonably available means may include accessing a directory of Business Identifier Codes and verifying that the code provided by the sender matches the provided institution name, and, if possible, the specific branch or location provided by the sender. Providers may also rely on other commercially available databases or directories to check other recipient institution identifiers. If reasonable verification means fail to identify that the recipient institution identifier is incorrect, the exception in § 1005.33(a)(1)(iv)(D) will apply, assuming that the provider can satisfy the other conditions in § 1005.33(h). Similarly, if no reasonably available means exist to verify the accuracy of the recipient institution identifier, § 1005.33(h)(2) would be satisfied and thus the exception in § 1005.33(a)(1)(iv)(D) also will apply, again assuming the provider can satisfy the other conditions in § 1005.33(h). However, where a provider does not employ reasonably available means to verify a recipient institution identifier, § 1005.33(h)(2) is not satisfied and the exception in § 1005.33(a)(1)(iv)(D) will not apply.

2. *Reasonable efforts.* Section 1005.33(h)(5) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. Under § 1005.33(h)(5), if the remittance transfer provider is requested to provide documentation or other supporting information in order for the pertinent institution or authority to obtain the proper authorization for the return of the incorrectly credited amount, reasonable efforts to recover the amount include timely providing any such documentation to the extent that it is available and permissible under law. The following are examples of reasonable efforts:

i. The remittance transfer provider promptly calls or otherwise contacts the institution that received the transfer, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

ii. The remittance transfer provider promptly uses a messaging service through a funds transfer system to contact institution that received the transfer, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, in accordance with the messaging service's rules and protocol, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

3. *Promptness of Reasonable Efforts.* Section 1005.33(h)(5) requires that a remittance transfer provider act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider acts promptly to use reasonable efforts depends on the facts and circumstances. For example, if, before the date of availability disclosed pursuant to § 1005.31(b)(2)(ii), the sender informs the provider that the sender provided a mistaken account number, the provider will have acted promptly if it attempts to contact the recipient's institution before the date of availability.

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Section 1005.36—Transfers Scheduled Before the Date of Transfer

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36(a) Timing

36(a)(2) Subsequent Preauthorized Remittance Transfers

1. *Changes in Disclosures.* When a sender schedules a series of preauthorized remittance transfers, the provider is generally not required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, § 1005.36(a)(1)(i) requires the provider to provide a pre-payment disclosure and receipt for the first in the series of preauthorized remittance transfers in accordance with the timing requirements set forth in § 1005.31(e). While certain information in those disclosures is expressly permitted to be estimated (see § 1005.32(b)(2)), other information is not permitted to be estimated, or is limited in how it may be estimated. When any of the information on the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), other than the temporal disclosures required by § 1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a

subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, the provider must provide, within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer, a receipt that complies with § 1005.31(b)(2) and which discloses, among the other disclosures required by § 1005.31(b)(2), the changed terms. For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is $20 and, after six preauthorized remittance transfers, the provider increases its fee to $30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax collected by the provider increases from 1.5% of the amount that will be transferred to the designated recipient to 2.0% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. In contrast, § 1005.36(a)(2)(i) does not require an updated receipt where an exchange rate, estimated as permitted by § 1005.32(b)(2), changes.

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Appendix A—Model Disclosure Clauses and Forms

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2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions and remittance transfer providers to facilitate compliance with the disclosure requirements of §§ 1005.5(b)(2) and (3), 1005.6(a), 1005.7, 1005.8(b), 1005.14(b)(1)(ii), 1005.15(d)(1) and (2), 1005.18(c)(1) and (2), 1005.31, 1005.32 and 1005.36. The use of appropriate clauses in making disclosures will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of the act provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively.

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4. *Model forms for remittance transfers.* The Bureau will not review or approve disclosure forms for remittance transfer providers. However, this appendix contains 15 model forms for use in connection with remittance transfers. These model forms are intended to demonstrate several formats a remittance transfer provider may use to comply with the requirements of § 1005.31(b). Model Forms A–30 through A–32 demonstrate how a provider could provide the required disclosures for a remittance transfer exchanged into local currency. Model Forms A–30(a), (b), (c), and (d) demonstrate four options regarding model language related to the required disclaimer, where applicable, of non-covered third-party fees and taxes on the remittance transfer collected by a person other than the provider under § 1005.31(b)(1)(viii). Model forms 30(b) through (d) also include language that may be used if a provider elects to estimate either these non-covered third-party fees or taxes collected by a person other than the provider as part of the disclaimer. Model Forms A–33 through A–35 demonstrate how a provider could provide the required disclosures for dollar-to-dollar remittance transfers. These forms also demonstrate disclosure of the required content, in accordance with the grouping and proximity requirements of § 1005.31(c)(1) and (2), in both a register receipt format and an 8.5 inch by 11 inch format. Model Form A–36 provides long form model error resolution and cancellation disclosures required by § 1005.31(b)(4), and Model Form A–37 provides short form model error resolution and cancellation disclosures required by § 1005.31(b)(2)(iv) and (vi). Model Forms A–38 through A–41 provide language for Spanish language disclosures.

i. The model forms contain information that is not required by subpart B, including a confirmation code, the sender's name and contact information, and the optional disclosure of the estimated amount of these non-covered third-party fees and taxes collected by a person other than the provider as part of the disclaimer. Additional information not required by subpart B may be presented on the model forms as permitted by § 1005.31(b)(1)(viii) and (c)(4). Any additional information must be presented consistent with a remittance transfer provider's obligation to provide required disclosures in a clear and conspicuous manner.

ii. Use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any rearrangement or modification of the format of the model forms must be consistent with the form, grouping, proximity, and other requirements of § 1005.31(a) and (c). Providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of Model Forms A–30 to A–41.

iii. Permissible changes to the language and format of the model forms include, for example:

A. Substituting the information contained in the model forms that is intended to demonstrate how to complete the information in the model forms—such as names, addresses, and Web sites; dates; numbers; and State-specific contact information—with information applicable to the remittance transfer. In addition, if the applicable non-covered third-party fees are imposed by an institution other than a bank, a provider could modify the disclaimer accordingly.

B. Eliminating disclosures that are not applicable to the transfer, as described under § 1005.31(b). For example, if only covered third-party fees are imposed, a provider would not use a disclaimer related to additional fees that may apply because all applicable fees are covered and included in the disclosure as required under § 1005.31(b)(1)(vi).

C. Correcting or updating telephone numbers, mailing addresses, or Web site addresses that may change over time.

D. Providing the disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats.

E. Adding a term substantially similar to ''estimated'' in close proximity to the specified terms in § 1005.31(b)(1) and (2), as required under § 1005.31(d).

F. Providing the disclosures in a foreign language, or multiple foreign languages, subject to the requirements of § 1005.31(g).

G. Substituting cancellation language to reflect the right to a cancellation made pursuant to the requirements of § 1005.36(c).

iv. Changes to the model forms that are not permissible include, for example, adding information that is not segregated from the required disclosures, other than as permitted by § 1005.31(c)(4).

Dated: April 30, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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Part IV

The President

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Presidential Documents

Title 3—

The President

Proclamation 8981 of May 17, 2013

National Safe Boating Week, 2013

By the President of the United States of America

A Proclamation

Every year, the United States Coast Guard joins partners nationwide to raise awareness about boating responsibly. We highlight that important work during National Safe Boating Week, and we encourage all boaters to take appropriate precautions before casting off this season.

Safe boating starts onshore. Americans planning to spend a day on the water should prepare by filing a float plan with family or a friend, getting a free vessel safety check, and participating in a boating safety course. As they embark, boaters should make sure they have checked the marine forecast and all passengers are wearing a life jacket. And to put an end to preventable accidents that claim too many lives every year, individuals should never operate a boat under the influence of drugs or alcohol.

Boating is an important part of our national heritage. This week, let us carry that tradition forward by following commonsense safety procedures and keeping our lakes, rivers, and oceans safe for all to enjoy.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period prior to Memorial Day weekend as ''National Safe Boating Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 18 through May 24, 2013, as National Safe Boating Week. I encourage all Americans who participate in boating activities to observe this occasion by learning more about safe boating practices and taking advantage of boating education.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

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Presidential Documents

Proclamation 8982 of May 17, 2013

Emergency Medical Services Week, 2013

By the President of the United States of America

A Proclamation

In every corner of our country, emergency medical services (EMS) practitioners are hard at work delivering hope and care to Americans in dire circumstances. In the face of chaos and tragedy, their steady hands provide vital, life-saving services, and their calm under pressure delivers comfort to neighbors in need. During Emergency Medical Services Week, we pause to offer our gratitude to these remarkable men and women, whose dedication is fundamental to our society's well-being.

In recent weeks, we have again seen the critical role EMS professionals play in times of crisis. When explosives went off at the Boston Marathon, EMS personnel rushed toward the blasts and, with selfless disregard for their own safety, immediately tended to the injured. Alongside countless volunteers and ordinary citizens, they demonstrated the very best of the American spirit—a spirit that EMS professionals display every day. My Administration remains dedicated to providing these courageous first responders, emergency medical technicians, 911 dispatchers, law enforcement officers, volunteers, and others throughout our health care system with the support they need to aid the American people in their darkest hours.

When Americans find themselves in times of crisis—from car accidents to national tragedies—our robust network of EMS professionals ensures that quality medical care is only moments away. This week, let us recommit to supporting EMS personnel and thanking them for their heroic contributions to our lives.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 19 through May 25, 2013, as Emergency Medical Services Week. I encourage all Americans to observe this occasion by sharing their support with their local EMS providers and taking steps to improve their personal safety and preparedness.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–12400
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Presidential Documents

Proclamation 8983 of May 17, 2013

World Trade Week, 2013

By the President of the United States of America

A Proclamation

As a Nation, we need to do everything we can to create good, middle-class jobs right here in America. And one of the best ways we can do that is by boosting manufacturing and expanding trade that allows us to sell more of our goods and services all around the world. We have made important progress toward meeting that goal under our National Export Initiative, and we are taking historic steps to help our businesses access new markets abroad. But we cannot stop there. We need to keep making the investments in commerce and infrastructure that drive our economic growth and bring more Americans into a thriving middle class.

We can start by modernizing our roads, bridges, and ports. These upgrades would allow American companies to ship their goods faster and cheaper, and they would encourage businesses worldwide to set up shop here and bring more jobs to our shores. So earlier this year, I proposed the Partnership to Rebuild America—a collaboration between the private and public sectors to break ground on our most pressing infrastructure projects.

In the past 4 years, we have focused on opening up growing markets for our businesses through historic trade agreements and enforcing trade rights so American workers can compete on a level playing field. To build on that progress, we are joining nations in Asia and the Americas to negotiate a new, high-standard trade agreement: the Trans-Pacific Partnership. Once realized, the deal would boost our exports, support American jobs, and help our companies succeed in the global marketplace. And to ramp up trade with Europe, we also plan to launch talks for a Transatlantic Trade and Investment Partnership with the European Union.

My Administration is committed to expanding international commerce that creates jobs and grows our economy. During World Trade Week, we recognize workers, growers, and entrepreneurs nationwide who share that ambition, and we rededicate ourselves to advancing it in the year ahead.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 19 through May 25, 2013, as World Trade Week. I encourage all Americans to observe this week with events, trade shows, and educational programs that celebrate and inform Americans about the benefits of trade to our Nation and the global economy.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–12401
Filed 5–21–13; 11:15 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8984 of May 17, 2013

Armed Forces Day, 2013

By the President of the United States of America

A Proclamation

Since the earliest days of our Union, America has been blessed with an unbroken chain of patriots willing to give of themselves so their fellow citizens might live free. Whenever our Nation has come under attack, courageous men and women in uniform have risen to her defense. Whenever our liberties have come under assault, our service members have responded with resolve. Time and again, these heroes have sacrificed to sustain that powerful promise that we hold so dear—life, liberty, and the pursuit of happiness. And on Armed Forces Day, we honor those who serve bravely and sacrifice selflessly in our name.

Our Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen represent the best of the American character. They serve with integrity and do whatever the country they love asks of them, choosing flag over fortune and service over self-interest. Year after year, tour after tour, their dedication to protecting us at home and preserving our ideals never wavers; their commitment to each other never falters. They are the few who carry the remarkable weight of our entire Nation, and in their example we see why America is and always will be the greatest country on Earth.

Today, we pause to express our gratitude, mindful that words and ceremonies are not enough and that our thanks extend not only to those in uniform, but also to the families who serve alongside them. We are bound by a sacred obligation to ensure our service members and their loved ones have the resources and benefits they have earned and deserve, and only when we uphold this trust do we truly show our appreciation for our Armed Forces.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, and Commander in Chief of the Armed Forces of the United States, continuing the precedent of my predecessors in office, do hereby proclaim the third Saturday of each May as Armed Forces Day.

I direct the Secretary of Defense on behalf of the Army, Navy, Air Force, and Marine Corps, and the Secretary of Homeland Security on behalf of the Coast Guard, to plan for appropriate observances each year, with the Secretary of Defense responsible for encouraging the participation and cooperation of civil authorities and private citizens.

I invite the Governors of the States, the Commonwealth of Puerto Rico, and other areas subject to the jurisdiction of the United States, to provide for the observance of Armed Forces Day within their jurisdiction each year in an appropriate manner designed to increase public understanding and appreciation of the Armed Forces of the United States. I also invite veterans, civic leaders, and organizations to join in the observance of Armed Forces Day.

Finally, I call upon all Americans to display the flag of the United States at their homes on Armed Forces Day, and I urge citizens to learn more about military service by attending and participating in the local observances of the day. I also encourage Americans to volunteer at organizations that provide support to our troops.

Proclamation 8823 of May 18, 2012, is hereby superseded.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–12402
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Presidential Documents

Memorandum of May 17, 2013

Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures

Memorandum for the Heads of Executive Departments and Agencies

Reliable, safe, and resilient infrastructure is the backbone of an economy built to last. Investing in our Nation's infrastructure serves as an engine for job creation and economic growth, while bringing immediate and long-term economic benefits to communities across the country. The quality of our infrastructure is critical to maintaining our Nation's competitive edge in a global economy and to securing our path to energy independence. In taking steps to improve our infrastructure, we must remember that the protection and continued enjoyment of our Nation's environmental, historical, and cultural resources remain an equally important driver of economic opportunity, resiliency, and quality of life.

Through the implementation of Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), executive departments and agencies (agencies) have achieved better outcomes for communities and the environment and realized substantial time savings in review and permitting by prioritizing the deployment of resources to specific sectors and projects, and by implementing best-management practices.

These best-management practices include: integrating project reviews among agencies with permitting responsibilities; ensuring early coordination with other Federal agencies, as well as with State, local, and tribal governments; strategically engaging with, and conducting outreach to, stakeholders; employing project-planning processes and individual project designs that consider local and regional ecological planning goals; utilizing landscape- and watershed-level mitigation practices; promoting the sharing of scientific and environmental data in open-data formats to minimize redundancy, facilitate informed project planning, and identify data gaps early in the review and permitting process; promoting performance-based permitting and regulatory approaches; expanding the use of general permits where appropriate; improving transparency and accountability through the electronic tracking of review and permitting schedules; and applying best environmental and cultural practices as set forth in existing statutes and policies.

Based on the process and policy improvements that are already being implemented across the Federal Government, we can continue to modernize the Federal Government's review and permitting of infrastructure projects and reduce aggregate timelines for major infrastructure projects by half, while also improving outcomes for communities and the environment by institutionalizing these best-management practices, and by making additional improvements to enhance efficiencies in the application of regulations and processes involving multiple agencies—including expanding the use of web-based techniques for sharing project-related information, facilitating targeted and relevant environmental reviews, and providing meaningful opportunities for public input through stakeholder engagement.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to advance the goal of cutting

aggregate timelines for major infrastructure projects in half, while also improving outcomes for communities and the environment, I hereby direct the following:

Section 1. *Modernization of Review and Permitting Regulations, Policies, and Procedures.* (a) The Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee), established by Executive Order 13604, shall work with the Chief Performance Officer (CPO), in coordination with the Office of Information and Regulatory Affairs (OIRA) and the Council on Environmental Quality (CEQ), to modernize Federal infrastructure review and permitting regulations, policies, and procedures to significantly reduce the aggregate time required by the Federal Government to make decisions in the review and permitting of infrastructure projects, while improving environmental and community outcomes.

This modernization shall build upon and incorporate reforms identified by agencies pursuant to Executive Order 13604 and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review).

(b) Through an interagency process, coordinated by the CPO and working closely with CEQ and OIRA, the Steering Committee shall conduct the following modernization efforts:

(i) Within 60 days of the date of this memorandum, the Steering Committee shall identify and prioritize opportunities to modernize key regulations, policies, and procedures—both agency-specific and those involving multiple agencies—to reduce the aggregate project review and permitting time, while improving environmental and community outcomes.

(ii) Within 120 days of the date of this memorandum, the Steering Committee shall prepare a plan for a comprehensive modernization of Federal review and permitting for infrastructure projects based on the analysis required by subsection (b)(i) of this section that outlines specific steps for re-engineering both the intra- and inter-agency review and approval processes based on experience implementing Executive Order 13604. The plan shall identify proposed actions and associated timelines to:

(1) institutionalize or expand best practices or process improvements that agencies are already implementing to improve the efficiency of reviews, while improving outcomes for communities and the environment;

(2) revise key review and permitting regulations, policies, and procedures (both agency-specific and Government-wide);

(3) identify high-performance attributes of infrastructure projects that demonstrate how the projects seek to advance existing statutory and policy objectives and how they lead to improved outcomes for communities and the environment, thereby facilitating a faster and more efficient review and permitting process;

(4) create process efficiencies, including additional use of concurrent and integrated reviews;

(5) identify opportunities to use existing share-in-cost authorities and other non-appropriated funding sources to support early coordination and project review;

(6) effectively engage the public and interested stakeholders;

(7) expand coordination with State, local, and tribal governments;

(8) strategically expand the use of information technology (IT) tools and identify priority areas for IT investment to replace paperwork processes, enhance effective project siting decisions, enhance interagency collaboration, and improve the monitoring of project impacts and mitigation commitments; and

(9) identify improvements to mitigation policies to provide project developers with added predictability, facilitate landscape-scale mitigation based on conservation plans and regional environmental assessments, facilitate interagency mitigation plans where appropriate, ensure accountability and

the long-term effectiveness of mitigation activities, and utilize innovative mechanisms where appropriate.

The modernization plan prepared pursuant to this section shall take into account funding and resource constraints and shall prioritize implementation accordingly.

(c) Infrastructure sectors covered by the modernization effort include: surface transportation, such as roadways, bridges, railroads, and transit; aviation; ports and related infrastructure, including navigational channels; water resources projects; renewable energy generation; conventional energy production in high-demand areas; electricity transmission; broadband; pipelines; storm water infrastructure; and other sectors as determined by the Steering Committee.

(d) The following agencies or offices and their relevant sub-divisions shall engage in the modernization effort:

(i) the Department of Defense;

(ii) the Department of the Interior;

(iii) the Department of Agriculture;

(iv) the Department of Commerce;

(v) the Department of Transportation;

(vi) the Department of Energy;

(vii) the Department of Homeland Security;

(viii) the Environmental Protection Agency;

(ix) the Advisory Council on Historic Preservation;

(x) the Department of the Army;

(xi) the Council on Environmental Quality; and

(xii) such other agencies or offices as the CPO may invite to participate.

Sec. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals, or the regulatory review process.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum shall be implemented consistent with Executive Order 12898 of February 11, 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments), and my memorandum of November 5, 2009 (Tribal Consultation).

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 17, 2013.

[FR Doc. 2013–12403
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Reader Aids

Federal Register

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Wednesday, May 22, 2013

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H.R. 1071/P.L. 113–10
To specify the size of the precious-metal blanks that will be used in the production of the National Baseball Hall of Fame commemorative coins. (May 17, 2013; 127 Stat. 445)
Last List May 3, 2013

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