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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, December 7, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1054]

RIN 1625–AA11, 1625–AA00

Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL; Safety Zone, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing both a safety zone and a Regulated Navigation Area (RNA) on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This temporary interim rule places navigational, environmental and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' (USACE) electrical dispersal fish barrier system.

DATES: *Effective Date:* In this rule, § 165.923 is suspended, and a new temporary section, § 165.T09–1054, is added in the CFR effective 5 p.m. on December 1, 2010 until 5 p.m. on December 1, 2011. This rule is effective with actual notice for purposes of enforcement beginning at 5 p.m. on December 1, 2010 until 5 p.m. on December 1, 2011.

Comment Period: Comments and related material must reach the Docket Management Facility on or before January 31, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1054 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. To avoid duplication, please use only one of these methods. For instructions on submitting comments, *see* the "Public Participation and Request for Comments."

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216–902–6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1054), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert "USCG–2010–1054" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2010–1054 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before February 1, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

This temporary interim rule essentially creates an extension of a prior temporary interim rule with

request for comments published in the **Federal Register** on January 6, 2010 (75 FR 754). Comments were received under that temporary rule and have been considered and addressed in this rulemaking. The comments that were received and the Coast Guard's response are addressed below in the *Discussion of Rule* section. The Coast Guard also renews its requests for comments that will be considered when determining the final rule.

For the reasons discussed below, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** based upon data which indicates that Asian carp are much closer to the Great Lakes waterway system than originally thought. The possibility exists that vessels will transport Asian carp eggs, gametes or juvenile fish safely through the electrical dispersal barrier in water attained south of the fish barrier that is then transported and discharged on the other side of the barrier. The Asian carp are the subject of an ongoing multi-agency study aimed at preventing their introduction into the Great Lakes. The proposed temporary safety zone and RNA will allow that multi-agency effort to progress towards its goal of protecting people, vessels, and the environment from the hazards associated with the possible introduction of invasive species such as Asian carp into the Great Lakes.

As such, the USCG must take immediate steps in order to prevent possible introduction of Asian carp before the ongoing effort can be completed. Therefore, it would be against the public interest to delay the issuing of this rule. Therefore, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(3).

RNA Good Cause Discussion

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the CSSC. The demonstration barrier, commonly referred to as "Barrier I," generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal. In 2006, the USACE completed construction of a new barrier, "Barrier IIA." Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the CSSC, than Barrier I. The USACE is currently in the process of constructing and testing "Barrier IIB" which will operate alongside Barrier IIA. Barrier IIB will also be capable of generating the four-volts per inch field strength.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008 by the USACE at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level.

In the past, the Coast Guard advised the USACE that it has no objection to the activation of Barrier IIA and Barrier I at a maximum strength of one-volt per inch. Testing on commercial vessels transiting the canal over the fish barrier was conducted at one volt per inch indicating that although the barriers create risks to people and vessels, those risks could be mitigated by following certain procedures. These mitigation procedures for the barrier operating at one volt per inch were implemented in a temporary interim rule establishing an RNA and a safety zone that was published in the **Federal Register** on February 9, 2009 (74 FR 6352), as well as an NPRM published in the **Federal Register** on May 26, 2009 (74 FR 24722).

However, both of these rulemakings reflected the prior operating parameters of the dispersal barriers and contemplated further testing of the effects of higher voltages on commercial and recreational vessels as well as people. After Barrier IIA was energized, the USACE completed safety testing in consultation with the U.S. Coast Guard in August of 2009, to test various configurations of commercial tugs and barges as well as recreational vessels with non-conductive hulls passing through the barriers at increased voltage and operating parameters. Although testing and analysis of the risks to persons and vessels have begun, such efforts are ongoing.

Once Barrier IIB is energized, additional testing must be completed. In addition, the USACE is still in the process of determining what the optimal operational configurations of the barriers will be. Until all the barriers are operational, the strength and configuration of the barrier are finalized by the USACE and all necessary safety and operational testing is completed, the Coast Guard is unable to predict what waterway safety restrictions will be necessary in the vicinity of the electric dispersal barrier. As such, the Coast Guard is unable to give the public advanced notice of the final restrictions that will be necessary on the CSSC, but must take this immediate, interim action in order to prevent injury to people as well as damage to vessels and the waterway. Given the risks involved as well as the uncertainty of the situation, it is contrary to the public interest to delay the effective date of the RNA included in this rule.

Safety Zone Good Cause Discussion

In November 2009, the USACE made an announcement that it had discovered environmental deoxyribonucleic acid (e-dna) from Asian carp north of the fish barrier, indicating the potential that an unknown amount of Asian carp may be living in the waterways north of the fish barrier in the Cal-Sag Channel but south of the O'Brien Locks. Under 50 CFR Part 16, Asian carp are listed as an injurious species of fish and as such are illegal for interstate transportation. A permit is required to transport all viable eggs, gametes, as well as live Silver or Asian carp. Historically, vessels have taken on water south of the barrier and transported it across the barrier as bilge, ballast, or other non-potable water. This practice is considered a possible bypass vector for transporting Asian carp eggs or juvenile fish from south of the barrier to north of the barrier. Although it not believed that Asian carp have been transported into the Great Lakes via this entry method, immediate action is needed to close down this possible bypass vector. In response to public comments on the previous interim rule, there is no indication that any particular type of vessel has transported Asian carp across the barrier or that any type of vessel is a higher risk than others for transporting Asian carp. For this reason, delaying the effective date for the safety zone included in this temporary interim rule would be contrary to the public interest.

Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the CSSC. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is

located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA is up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for approximately seven weeks in September and October 2009. Construction of a third barrier (Barrier IIB) has commenced and is ongoing. Barrier IIB will augment the capabilities of Barriers I and IIA. Until all three barriers are functional at the same time and testing is completed, the USACE is unable to determine what the final operational configurations of the dispersal barrier will be. Until that time, the necessary long-term safety and environmental restrictions required for this portion of the CSSC cannot be determined.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of Barrier I. During subsequent USACE safety testing, sparking was observed at points where metal-to-metal contact occurred between two barges in the barrier field.

The electric current in the water also poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU final report concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

A Safety Work Group facilitated by the Coast Guard and in partnership with the USACE and industry initially met in February 2008 and focused on three goals: (1) Education and public outreach, (2) keeping people out of the water, and (3) egress/rescue efforts. The Safety Work Group has regularly been attended by eleven stakeholders, including industry representatives such as the American Waterways Operators and Illinois River Carriers Association, the Army Corps of Engineers Chicago District, Coast Guard Marine Safety Unit Chicago, Coast Guard Sector Lake Michigan/Captain of the Port Lake Michigan, and the Ninth Coast Guard District.

Based on the safety hazards associated with electric current flowing through navigable waterways and the uncertainty of the effects of higher voltage on people and vessels that pass over and adjacent to the barriers, the Coast Guard is implementing operational restrictions, via an RNA, on vessels until proper testing and analysis of such testing can be completed by the USACE. The Coast Guard appreciates the commercial significance of this waterway and will work closely with the USACE to reduce operational restrictions as soon as possible; however, it is imperative that the RNA be immediately enacted to avoid loss of life.

In addition to the USACE's electric dispersal barrier, rotenone, a fish toxicant, has been applied to approximately six miles of the CSSC while barrier maintenance was conducted to ensure no fish were able to transit the barrier. As a result, evidence indicating the presence of Asian carp, including one Silver carp south of the barrier, was found in the general vicinity of the barrier. Although research efforts are ongoing, researchers have not been able to determine a number or mass of the Asian carp present either north or immediately south of the barrier.

Affected parties are reminded that the USACE may, at any time, permanently raise the operating parameters of the fish barrier in response to ongoing tests regarding the effectiveness of the barrier on the Asian carp. In addition, when USACE activates barrier IIB, additional testing will be necessary to ensure the safety of vessels. If the USACE permanently raises the voltage strength of the Barrier or otherwise alters Barrier operations to create unacceptable risks to waterway users, it is possible that fewer vessels will be given permission to enter the RNA and safety zone until further safety testing and analysis can be completed. Interested parties are urged to provide comment on how a permanent closure of the CSSC at the affected location would impact them.

Discussion of Rule

This temporary interim rule replaces 33 CFR 165.T09–1004, the last temporary rule published to address risks associated with Barrier IIA and the application of rotenone to the CSSC. This rule also suspends 33 CFR 165.923 until 5 p.m. on December 1, 2011. This rule places an RNA on all waters located adjacent to, and over, the electrical dispersal barriers on the CSSC between mile marker 295.5 (approximately 3600 feet south of the Romeo Road Bridge) and mile marker 297.2 (approximately 2,640 feet north of the aerial pipeline arch). This RNA was reduced in size in response to public comments on a previous temporary interim rule. Public comments suggested that the RNA extend no further than 1,200 feet north and south of the aerial pipeline arch and the Romeo Road Bridge respectively. The Coast Guard finds that the current size of the RNA is necessary to account for situations where a vessel inside the barrier could come into contact with a vessel outside the barrier possibly causing sparking greater than 1,200 feet beyond the Romeo Road Bridge or the aerial pipeline arch.

The rule also places a safety zone over a smaller portion of these same waters located between mile marker 296.1 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline arch located approximately 2,693 feet north east of Romeo Road Bridge). The RNA and safety zone will be enforced at all times until the USACE suspends operation of the electrified fish barrier and the Asian carp are no longer deemed an environmental threat to the Great Lakes. This temporary rule is to remain in effect until December 1, 2011 in order to give sufficient time for the USACE to complete construction and testing of Barrier IIB and determine the long-term operational configurations associated with the electric dispersal barrier.

The RNA places requirements on all vessels to include: (1) Vessels must be greater than twenty feet in length; (2) Vessel must not be a personal watercraft of any kind (*i.e.* jet skis, wave runners, kayak, *etc.*); (3) All up-bound and down-bound commercial tows that consist of barges carrying flammable liquid cargos (grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the RNA; (4) Vessels engaged in commercial service, as defined in 46 U.S.C 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements on either side; (5) Commercial tows transiting the RNA must only be made up with wire rope to ensure electrical connectivity between all segments of the tow; (6) All vessels are prohibited from loitering in the RNA; (7) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit; (8) All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA; (9) All personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on

open decks, they must wear a Coast Guard approved personal flotation device; (10) Vessels may not moor or lay up on the right or left descending banks of the RNA; and, (11) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

Public comments to the previous temporary interim rule suggested that both recreational and commercial vessel traffic (1) be prohibited from loitering, mooring, or laying up on the left or right descending banks; (2) provide radio notification before entering the RNA; and (3) move through the RNA with all due speed. The Coast Guard believes that suggestions (1) and (3) are already covered by the terms of this RNA in that no vessels may loiter or moor within the RNA. Secondly, all vessels must enter the RNA for the sole purpose of transiting to the other side and must maintain headway. Given the various vessel designs and engine configurations, requiring a certain speed is not prudent or necessary.

With regard to the requirement to have recreational vessels provide radio notification prior to entering the RNA, many of the recreational vessels that typically pass through the RNA are not required to carry marine band VHF radios. As such, requiring radio call outs is beyond the scope of this rule. Furthermore, the majority of recreational vessels that typically pass through the RNA are not comparable in size or maneuverability to the commercial vessels that typically pass through the RNA. As such, the Coast Guard finds that the proposed requirement is not necessary to prevent injury to persons, property, or the waterway. Furthermore, there has been no requirement for recreational vessels to make radio call outs since 2002 and there have been no reported casualties or incidents resulting from recreational vessels not calling out.

This temporary final rule places additional restrictions on all vessels transiting a safety zone that encompasses a smaller portion of the CSSC. The safety zone consists of all the waters of the CSSC located between 270 feet south of the Romeo Road Bridge (mile marker 296.1) to the south side of the aerial pipeline (mile marker 296.7). Vessels are prohibited from transiting the safety zone with non-potable water on board in any space except for water on board that will not be discharged on the other side of the safety zone. Vessels must notify and obtain permission from the Captain of the Port Sector Lake Michigan prior to transiting the safety zone if they intend to discharge any non-potable water attained on one-side of the safety zone on the other side of the zone. This includes water in void spaces being unintentionally introduced through cracks or other damage to the hull. The Captain of the Port Sector Lake Michigan maintains a telephone line that is manned 24-hours a day, seven days a week at 414–747–7182.

Public comments on this portion of the rule requested that this rule exempt "water on board from a commercial or municipal source (which ultimately could be discharged)" because it is inconsistent with Title 33 CFR Part 151. The Coast Guard declines to include such an exemption. First, the prohibitions in this rule are consistent with 33 CFR Part 151 because, under that Part, water from a commercial or municipal source held for the purpose to control or maintain trim, draught, stability, or stresses of the vessel, regardless of how it is carried, will still be considered "ballast water" as contemplated by Part 151. Therefore, Part 151 does not differentiate ballast water that is collected from commercial or municipal sources.

Secondly, if vessel operators intend on transiting the zone with the intent of discharging non-potable water that comes from a commercial or municipal source north of the barrier, those vessels are able to request permission to demonstrate to the District Commander or his designated representative that such discharge would be biologically sound on a case-by-case basis.

Public comments also requested that inadvertent leakage not be held as a violation of this rule because such a provision would be inconsistent with the Coast Guard's ballast water regulation. Again, the Coast Guard finds that the prohibitions against the discharge of non-potable water in this rule are consistent with the Coast Guard's ballast water regulations. Title 33 CFR Part 151 requires vessels to retain ballast water on board or use an environmentally sound method of ballast water management approved by the Commandant. The Coast Guard's interpretation of retaining ballast water on board does not allow for inadvertent leakage. Therefore, there is no inconsistency between the regulations. Furthermore, for those vessels that cannot avoid inadvertent leakage of non-potable water, they may be permitted to pass the safety zone if they can demonstrate through testing that the water does not contain potential Silver or Asian carp or viable eggs or gametes from these carp.

These restrictions are necessary for safe navigation of the RNA and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during safety tests conducted by the USACE. They are also necessary to protect from the harms presented by a potential invasion of Asian carp in Lake Michigan. Deviation from this temporary final rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. The Commander, Ninth Coast Guard District designates Captain of the Port Sector Lake Michigan and Commanding Officer, Marine Safety Unit Chicago, as his designated representatives for the purposes of the RNA.

If, for any reason, the safety zone or RNA is at any time suspended, the Commander, Ninth Coast Guard District or the Captain of the Port Lake Michigan will cause notice of the enforcement of the safety zone and/or RNA to be made by all appropriate means to effect the widest publicity among the affected segments of the public.

Regulatory Analyses

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

Regulatory Planning and Review

This temporary interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will affect commercial traffic transiting the electrical dispersal fish barrier system and surrounding waters. The USACE maintains data about the commercial vessels using the Lockport Lock and Dam, which provides access to the proposed RNA. According to USACE data, the commercial traffic through the Lockport Lock consisted of 147 towing vessels and 13,411 barges during 2007. Of those, 96 towing vessels and 2,246 barges were handling red flag cargo (*i.e.,* those carrying hazardous, flammable, or combustible material in bulk).

Recreational vessels will also be affected under this rule. According to USACE data, recreational vessels made up 66 percent of the usage of the Lockport Lock and Dam in 2007. Operation and maintenance of the USACE fish barrier will continue to affect recreational vessels as they have in the past. The majority of these vessels will still be able to transit the RNA under this rule. The potential cost

associated with this rule will include alternative transportation methods for vessels under 20 feet in length, bow boat assistance for red flag vessels and the potential costs associated with possible delays or inability to transit the safety zone for those vessels transporting non-potable water attained on one side of the barrier for discharge on the other.

We expect some provisions in this rule will not result in additional costs. These include loitering, mooring and PFD requirements. Similar to prior temporary rules, vessels are prohibited from mooring or loitering in the RNA and all personnel in the RNA on open decks are required to wear a Coast Guard approved Type I personal flotation device. Most commercial and recreational operators will have required flotation devices on board as a result of other requirements and common safe boating practices. Based on the past temporary rules, we observed no information and received no data to confirm there were additional costs as a result of these provisions.

In addition, the initial test results at the current operating parameters of two volts per inch indicate that the majority of commercial and recreational vessels that regularly transit the CSSC will be permitted to enter the regulated navigation area and safety zone under certain conditions. Those vessels that will not be permitted to pass through the barrier may be permitted, on a case by case basis, to pass via a dead ship tow by a commercial vessel that is able to transit.

We expect the benefits of this rule will mitigate marine safety risks as a result of the operation and maintenance of the fish barriers by the USACE. This rule will allow commerce to continue through the waters adjacent to and over these barriers. This rule will also mitigate the possibility of an Asian Carp introduction into Lake Michigan, and the Great Lakes system, as a result of commerce through the CSSC.

At this time, based on available information from past temporary rules, we anticipate that this rule will not be economically significant under Executive Order 12866 (*i.e.,* have an annual effect on the economy of $100 million or more). The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of this temporary interim rule. In response to public comments from the last temporary interim rule, the Coast Guard does not expect the USACE to resume funding of the bow boats. As such, interested parties are encouraged to comment on how this provision will impact them assuming there will be no Federal funding of bow boats. Comments can be made online by following the procedures outlined above in the **ADDRESSES** section.

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this temporary rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), as well as paragraph (27) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of regulated navigation areas and security or safety zones. This temporary rule will assist the aforementioned multi-agency effort to research and manage the possible impact of the Asian carp on the Great Lakes. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.923 [Suspended]

■ 2. Suspend § 165.923 from 5 p.m. on December 1, 2010 until 5 p.m. on December 1, 2011.

■ 3. Add new temporary § 165.T09–1054 from 5 p.m. on December 1, 2010 until 5 p.m. on December 1, 2011 as follows:

§ 165.T09–1054 Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Safety Zone.*

(1) The following area is a temporary safety zone: All waters of the CSSC located between mile marker 296.1 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline arch located approximately 2,693 feet north east of Romeo Road Bridge).

(2) *Regulations.*

(i) All vessels are prohibited from transiting the safety zone with any non-potable water on board if they intend to release that water in any form within, or on the other side of the safety zone. Non-potable water includes but is not limited to any water taken on board to control or maintain trim, draft, stability or stresses of the vessel, or taken on board due to free communication between the hull of the vessel and exterior water. Potable water is water treated and stored aboard the vessel that is suitable for human consumption.

(ii) Vessels with non-potable water onboard are permitted to transit the safety zone if they have taken steps to prevent the release of that water in any form, in or on the other side of, the safety zone, or alternatively if they have plans to dispose of the water in a biologically sound manner.

(iii) Vessels with non-potable water aboard that intend to discharge on the other side of the zone must contact the COTP, her designated representative or her on-scene representative and obtain permission to transit and discharge prior to transit. Examples of discharges that may be approved by the COTP include plans to dispose of the water in a biologically sound manner or demonstrate through testing that the non-potable water does not contain potential live Silver or Asian carp, or viable eggs or, gametes from these carp.

(iv) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone by vessels with non-potable water on board is prohibited unless authorized by the Captain of the Port Lake Michigan, her designated representative, or her on-scene representative.

(v) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on her behalf. The on-scene representative of the Captain of the Port Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio or loudhailer. The Captain of the Port Lake Michigan or her on-scene representative may also be contacted via VHF–FM radio Channel 16 or through the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

(b) *Regulated Navigation Area.* (1) The following is a regulated navigation area (RNA): All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.5 (approximately 3,600 feet south of the Romeo Road Bridge) and mile marker 297.2 (approximately 2,640 feet north of the aerial pipeline arch).

(2) *Regulations.*

(i) The general regulations contained in 33 CFR 165.13 apply.

(ii) Vessels that comply with the following restrictions are permitted to transit the RNA:

(A) All up-bound and down-bound barge tows that consist of barges carrying flammable liquid cargos (Grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the RNA.

(B) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements.

(C) Commercial tows transiting the RNA must be made up with only wire rope to ensure electrical connectivity between all segments of the tow.

(D) All vessels are prohibited from loitering in the RNA.

(E) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA.

(F) Except for law enforcement and emergency response personnel, all personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device.

(G) Vessels may not moor or lay up on the right or left descending banks of the RNA.

(H) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

(I) Persons on board any vessel transiting this RNA in accordance with this rule or otherwise are advised they do so at their own risk.

(J) Vessels must be greater than twenty feet in length.

(K) Vessels must not be a personal watercraft of any kind (*e.g.* jet skis, wave runners, kayaks, *etc.*).

(c) *Definitions.* The following definitions apply to this section:

Bow boat means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the RNA. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

Designated representative means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

Vessel means every description of watercraft or other artificial contrivance used, or capable or being used, as a means of transportation on water. This definition includes, but is not limited to, barges.

(d) *Enforcement Period.* The regulated navigation area and safety zone will be enforced from 5 p.m. on December 1, 2010, until 5 p.m. on December 1, 2011. This regulated navigation area and safety zone are enforceable with actual notice by Coast Guard personnel beginning 5 p.m. on December 1, 2010, until 5 p.m. on December 1, 2011.

(e) *Compliance.* All persons and vessels must comply with this section and any additional instructions or orders of the Ninth Coast Guard District Commander, or his designated representatives. Any person on board any vessel transiting this RNA in accordance with this rule or otherwise does so at their own risk.

(f) *Waiver.* For any vessel, the Ninth Coast Guard District Commander, or his designated representatives, may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

Dated: November 22, 2010.

M.N. Parks,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2010–30289 Filed 12–1–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Service Changes—Israel

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) section 243.13, the Country Price Groups and Weight Limits, and the Individual Country Listings to incorporate a change in Israel's First-Class Mail International® price group.

DATES: Effective January 2, 2011.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole at 202–268–2260.

SUPPLEMENTARY INFORMATION: On July 9, 2010, the Postal Service published a proposed rule **Federal Register** notice (75 FR 39475–39477) that included a change to Israel's First-Class Mail International price group from Price Group 8 to Price Group 5 in order to align operational efficiencies more closely with costs.

This minor classification change was required to be filed with the Postal Regulatory Commission (PRC). The Postal Service did so as part of its request for an exigent price increase on July 6, 2010. Although the PRC rejected the exigent price filing, it invited the Postal Service to file separately the classification changes incorporated in the exigent price request. On November 3, 2010, the Postal Service filed such a request to implement the change to Israel's Price Group for First-Class Mail International. The Commission concurred with the notice on November 22, 2010.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR Part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

* * * * *

2 Conditions for Mailing

* * * * *

240 First-Class Mail International

* * * * *

243 Prices and Postage Payment Methods

243.1 Prices

* * * * *

243.13 Destinating Countries and Price Groups

* * * * *

Exhibit 243.13

First-Class Mail International Price Groups

[Revise Exhibit 243.13 by changing the Price Group for Israel to Price Group 5 as follows:]

Country	Price group
* * * * *	
Israel	5
* * * * *	

* * * * *

Country Price Groups and Weight Limits

* * * * *

[Revise the listing for Israel by changing the Price Group for First-Class Mail International to Price Group 5 as follows:]

Country	Global express guaranteed		Express mail international		Priority mail international[1]		First-Class mail international	
	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt.[2] (ozs./lbs.)
*	*	*	*	*	*	*		*
Israel	6	70	8	44	8	44	5	3.5/4
*	*	*	*	*	*	*		*

* * * * *

Individual Country Listings

Country Conditions for Mailing

Israel

* * * * *

[Revise the heading and prices for First-Class Mail International to incorporate the change from Price Group 8 to Price Group 5 as follows:]

First-Class Mail International (240)
Price Group 5

Letters

Weight not over (ozs.)	Price	
1	$0.98	*Note:* A letter meeting one or more of the nonmachinable characteristics in 241.217 is charged a nonmachinable surcharge of $0.20.
2	1.82	
3	2.66	
3.5	3.50	

Large Envelopes (Flats)

Weight not over (ozs.)	Price	Weight not over (ozs.)	Price	Weight not over (ozs.)	Price
1	$1.24	12	$8.84	44	$22.60
2	2.08	16	10.56	48	24.32
3	2.92	20	12.28	52	26.04
4	3.76	24	14.00	56	27.76
5	4.60	28	15.72	60	29.48
6	5.44	32	17.44	64	31.20
7	6.28	36	19.16		
8	7.12	40	20.88		

Packages (Small Packets)

Weight not over (ozs.)	Price	Weight not over (ozs.)	Price	Weight not over (ozs.)	Price
1	$1.44	12	$9.04	44	$22.80
2	2.28	16	10.76	48	24.52
3	3.12	20	12.48	52	26.24
4	3.96	24	14.20	56	27.96
5	4.80	28	15.92	60	29.68
6	5.64	32	17.64	64	31.40
7	6.48	36	19.36		
8	7.32	40	21.08		

* * * * *

We will publish an amendment to 39 CFR Part 20 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–30186 Filed 12–1–10; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2008–0064; 91200–1231–9BPP]

RIN 1018–AV66

Migratory Bird Permits; Removal of Rusty Blackbird and Tamaulipas (Mexican) Crow From the Depredation Order for Blackbirds, Cowbirds, Grackles, Crows, and Magpies, and Other Changes to the Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, change the regulations governing control of depredating blackbirds, cowbirds, grackles, crows, and magpies at 50 CFR 21.43. Because of long-term evidence of population declines throughout much of their ranges, we remove the Rusty Blackbird (*Euphagus carolinus*) and the Mexican (Tamaulipas) Crow (*Corvus imparatus*) from the list of species that may be controlled under the depredation order. With the effective date of this final rule, a depredation permit is required to conduct control actions to take either of these species. Also, nontoxic shot or bullets must be used in most cases when a firearm is used to control any species listed under the order. Finally, we add a requirement to report on control actions taken under the order.

DATES: This regulation will be effective on January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610, Phone: (703) 358–1825.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Part 21 of title 50 of the Code of Federal Regulations covers migratory bird permits. Subpart D deals specifically with the control of depredating birds and presently includes eight depredation orders. A depredation order is a regulation that allows the take of specific species of migratory birds, at specific locations, and for specific purposes without a depredation permit. The depredation order at 50 CFR 21.43 for blackbirds, cowbirds, grackles, crows, and magpies allows take when individuals of an included species are "found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance."

II. Species We Are Removing From the Depredation Order

We remove the Rusty Blackbird (*Euphagus carolinus*) and the Mexican (Tamaulipas) Crow (*Corvus imparatus*) from the list of species that may be controlled under the depredation order at 50 CFR 21.43. We remove the Rusty Blackbird because of the long-term downward trend in its population and its special conservation status. Because of the very limited distribution of the Tamaulipas Crow in the United States and its apparent rapid decline in numbers, we also remove this species from the list of species that may be controlled under the depredation order.

After the effective date of this final rule (*see* **DATES**), any take of either of these species will require a depredation permit (50 CFR 21.41) or other applicable MBTA permit. For background and current information on these two species, see our proposed rule published December 8, 2008 (73 FR 74447).

III. Additional Regulatory Changes

We also require the use of nontoxic ammunition for all take of migratory birds under this depredation order to prevent toxicity hazards to other wildlife. Further, we require reporting of control actions taken under the order to give us data on the number of each species taken each year to better monitor the effects of such take on populations of those species. We expect the respondents to be mostly State and Federal wildlife damage management personnel who undertake blackbird control to protect crops. We also make the list of species to which the depredation order applies more precise by listing each species that may be controlled under the order.

IV. Comments on the Proposed Rule or the Draft Environmental Assessment

Issue: Opposition to the depredation order.

"WS [U.S.D.A. Wildlife Services] is notorious for indiscriminate regimes that have resulted in the mortality of uncountable millions of birds * * * and will continue to pose a real risk to the rusty blackbird and Tamaulipas crow despite the proposed rule change. We therefore request that 50 CFR § 21.43 not only be narrowed in scope, but withdrawn completely."

"Currently, 50 CFR § 21.43 allows for such a broad exemption from the normal MBTA permitting process that some migratory birds are afforded virtually no protections—especially given the enormous amount of land conversion to agriculture and other uses."

Response: Blackbird depredation on crops has been clearly demonstrated. We will consider the effects of the depredation order as we obtain information on reported take of birds under its authority. We may make changes in the depredation order if we determine that it is advisable to do so. However, we leave the order in place.

Issue: Nontoxic ammunition requirement.

"We are also convinced that FWS should finalize its proposal to end the use of toxic shot for killing blackbirds, crows, and grackles, and thus also commend that portion of the proposed change to 50 CFR § 21.43 concerning this point. Lead shot can have detrimental effects on scavengers and the environment."

"I am writing to express my support for * * * the requirement to use nontoxic shot or bullets when a firearm is used to control any species listed under the order."

"WS recommends eliminating the non-toxic requirement for all ammunition in all situations involving blackbirds unless: (1) Further analysis by the FWS provides definitive evidence that lead ammunition has impacted rusty blackbird populations and (2) evidence is provided that lead ammunition used under the authority of the blackbird depredation order has impacted other wildlife species." (USDA Wildlife Services)

"Supporting documentation and analysis is needed for all claims of lead toxicosis in songbirds. The use of unsupported claims of lead toxicosis in songbirds should be discarded since there is not any information from

necropsies supporting these statements." (USDA Wildlife Services)

"The requirement to use non-toxic shot to take crows for depredation management is inconsistent with hunting regulations that allow the use of lead shot to hunt crows. This would represent an unequal application of the Migratory Bird Treaty Act. More lead shot will likely be used to take crows while hunting than non-toxic shot to take crows for depredation purposes." (Wildlife Services)

Response: "Lead has been known for centuries to be a broad-spectrum toxicant to humans and wildlife" (The Wildlife Society Position Statement on lead in ammunition and fishing tackle: *http://joomla.wildlife.org/documents/positionstatements/Lead_final_2009.pdf*). Schulz *et al.* (2009) reported that "Substantial information exists demonstrating the effects of lead poisoning on mourning doves." Poisoning of many other species of birds by lead shot has been well documented. We reasonably infer based on this information that lead is toxic to rusty blackbirds and other bird species, which provides sufficient justification to ban the use of lead shot in bird control under this order.

The requirement for nontoxic shot in depredation control or in hunting is already applied unevenly; nontoxic shot is not required for all migratory bird hunting. However, we are concerned about lead poisoning of migratory birds, and will seek to apply nontoxic shot requirement more evenly by implementing the use of nontoxic shot as we consider revisions to the current regulations.

In the proposed rule, we asserted no effects of lead shot from bird control under the depredation order on any particular wildlife taxon. However, wildlife professionals have recognized that lead shot and lead in bullets are hazardous in the environment, and have recommended that wildlife managers "Advocate the replacement of lead-based ammunition and fishing tackle with nontoxic products, while recognizing that complete replacement may not be possible in specific circumstances" (The Wildlife Society Final Position Statement on lead in ammunition and fishing tackle).

We recognize that nontoxic shot is not required in all hunting in locations in which control under this order might take place. Nevertheless, we are taking a step toward eliminating the use of lead shot and lead ammunition in wildlife damage control.

Issue: "We also have concerns that the use of nontoxic shot would limit the tools available to wildlife managers when conducting blackbird control work. Currently, nontoxic shot is difficult to obtain to nonexistent for air-rifles or .22 caliber rim fire rifles. Both may be valuable tools in certain settings." (Mississippi Flyway Council)

Response: We acknowledge the concerns over availability of lead projectiles for air-rifles and 22 caliber rimfire rifles. We added an exemption for their use to this rule.

Issue: "At the very least, FWS must require that agricultural interests and WS always employ non-lethal methods before releasing indiscriminate toxicants for birds."

Response: We added this requirement to the depredation order.

Issue: Reporting on take under the depredation order.

"WS recommends the FWS continue to use the existing reporting requirement already established to the greatest extent possible, and that no additional requirements be enacted." (Wildlife Services)

"We have concerns about the paperwork requirements of this DEA. We question if non-biologists will collect this data. As stated before, Wildlife Services does the vast majority of blackbird control work in the United States and is already collecting this data. We are concerned that this DEA subjects our constituents to prosecution when the potential for valuable data acquisition is questionable." (Mississippi Flyway)

Response: This depredation order currently has no requirement for reporting on control of depredating birds. We seek to bring this regulation in line with all other migratory bird depredation orders—which require reporting on control taken under their authorities. Without reporting on control of species taken under this order, we have no way to assess the effects of the activities it authorizes. Failure to assess control measures and report on control activities will potentially put any person conducting control under this depredation order in violation of the MBTA.

Issue: "We also ask that an additional provision be added discouraging control of night-time blackbird roosts during the winter months, as well into the month of March in northern regions, when Rusty Blackbirds might be reasonably assumed to be in the roosts."

Response: We defer to Wildlife Services and to State agencies to determine whether or not rusty blackbirds are present in winter night-time blackbird roosts. To ensure compliance with the MBTA, Wildlife Services and State agencies should ensure that no rusty blackbirds are present in a roost before conducting control actions. If Wildlife Services or a State agency determine that rusty blackbirds are present, the relevant agency would need to obtain a depredation permit from FWS before conducting any control actions on that roost.

Issue: "WS recommends the FWS develop a standardized method to estimate the species composition of large mixed blackbird flocks to enhance the reliability of the data collected and analyzed. Many times light conditions in the field are very poor thereby increasing the difficulty of species identification. Additionally, most citizens will be unaware of the reporting requirements and are unable to distinguish fish crows from American crows, common grackles from boat-tailed grackles, etc., and this will result in inaccurate data being reported to the FWS." (Wildlife Services)

Response: Though we recognize that there may be difficulties in distinguishing species of blackbirds, grackles, and crows, we assume that any person or agency undertaking control under this depredation order will carefully identify the species involved. If the individual or agency cannot do so, control under this depredation order should not be undertaken. We are willing to work with Wildlife Services on a method of estimating the species composition of large mixed blackbird flocks as allowed by our budget and other tasks.

V. Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this Final rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the

Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities because neither the Rusty Blackbird nor the Tamaulipas Crow are species that frequently cause depredation problems and, where they might do so, we can issue depredation permits to alleviate the problems. There are no costs associated with this regulations change except that persons needing a depredation permit to take Rusty Blackbirds or Tamaulipas Crows will have to pay the $100 application fee for a depredation permit. We estimate the number of people likely to apply for such a permit to be no more than 25 per year. We certify that because this Final rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)).

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

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

c. This rule will 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.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under the regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It will not be a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It will not interfere with the ability of States to manage themselves or their funds. No significant economic impacts are expected to result from the change in the depredation order.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This rule contains new information collection requirements that require approval by the Office of Management and Budget. The OMB has approved these requirements and assigned OMB Control Number 1018–0146, which expires November 30, 2013. We have addressed all comments received on the proposed rule above in this preamble.

Any person or agency acting under this depredation order must provide an annual report to the appropriate Regional Migratory Bird Permit Office. You must provide your name, address, phone number, and email address and the following information for each species taken:

(1) Species and number of birds taken;

(2) Months in which the birds were taken;

(3) State(s) and county(ies) in which the birds were taken; and

(4) General purpose for which the birds were taken (such as for protection of agriculture, human health and safety, property, or natural resources).

We collect this information so that we will be able to determine how many birds of each species are taken each year and whether the control actions are likely to affect the populations of those species.

Title: Depredation order for blackbirds, cowbirds, grackles, crows, and magpies, 50 CFR 21.43.

Service Form Number(s): None.

Affected Public: State and Federal wildlife damage management personnel; farmers; and individuals.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Estimated Annual Number of Respondents: 250.

Estimated Total Annual Responses: 250.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 500.

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 comment, at any time, on the accuracy of the information collection requirements in this rule and may submit comments to the Information Collection Clearance Officer, Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW., (Mailstop 222–ARLSQ), Washington, DC 20240.

National Environmental Policy Act

We have completed a Final Environmental Assessment (FEA) on this regulations change. The FEA is a part of the administrative record for this rule. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4332(C)) and Part 516 of the U.S. Department of the Interior Manual (516 DM), removal of the Rusty Blackbird and Tamaulipas Crow from the depredation order and adding requirements for nontoxic shot or bullets will not have a significant effect on the quality of the human environment, nor will it involve unresolved conflicts concerning alternative uses of available resources. There will be a positive environmental effect because take of the two removed species as a result of control actions will be significantly reduced or eliminated.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential effects. This rule will apply to Tribes and any control actions that Tribes carry out on their lands, but it will not

interfere with the ability of Tribes to manage themselves or their funds.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule change will not be a significant regulatory action under E.O. 12866, nor will it significantly affect energy supplies, distribution, or use. This action will not be a significant energy action and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). We have concluded that the regulation change will not affect listed species.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows.

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

■ 2. Revise § 21.43 as follows:

§ 21.43 Depredation order for blackbirds, cowbirds, grackles, crows, and magpies.

You do not need a Federal permit to control the species listed in the table below if they are committing or about to commit depredations on ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner that they are a health hazard or other nuisance:

Blackbirds	Cowbirds	Grackles	Crows	Magpies
Brewer's (*Euphagus cyanocephalus*). Red-winged (*Agelaius phoeniceus*). Yellow-headed (*Xanthocephalus xanthocephalus*).	Bronzed (*Molothrus aeneus*). Brown-headed (*Molothrus ater*). Shiny (*Molothrus bonariensis*).	Boat-tailed (*Quiscalus major*). Common (*Quiscalus quiscula*). Great-tailed (*Quiscalus mexicanus*). Greater Antillean (*Quiscalus niger*).	American (*Corvus brachyrhynchos*). Fish (*Corvus ossifragus*) ... Northwestern (*Corvus caurinus*).	Black-billed (*Pica hudsonia*). Yellow-billed (*Pica nuttalli*).

(a) You must attempt to control depredation by species listed under this depredation order using non-lethal methods before you may use lethal control.

(b) In most cases, if you use a firearm to kill migratory birds under the provisions of this section, you must use nontoxic shot or nontoxic bullets to do so. See § 20.21(j) of this chapter for a listing of approved nontoxic shot types. However, this prohibition does not apply if you use an air rifle, an air pistol, or a 22 caliber rimfire firearm for control of depredating birds under this order.

(c) If you exercise any of the privileges granted by this section, you must allow any Federal, State, tribal, or territorial wildlife law enforcement officer unrestricted access at all reasonable times (including during actual operations) over the premises on which you are conducting the control. You must furnish the officer whatever information he or she may require about your control operations.

(d) You may kill birds under this order only in a way that complies with all State, tribal, or territorial laws or regulations. You must have any State, tribal, or territorial permit required to conduct the activity.

(e) You may not sell, or offer to sell, any bird, or any part thereof, killed under this section, but you may possess, transport, and otherwise dispose of the bird or its parts.

(f) Any person or agency acting under this depredation order must provide to the appropriate Regional Migratory Bird Permit Office an annual report for each species taken. You can find the addresses for the Regional Migratory Bird Permit Offices in § 2.2 of subchapter A of this chapter. You must submit your report by January 31st of the following year, and you must include the following information:

(1) Your name, address, phone number, and e-mail address;

(2) The species and number of birds taken;

(3) The months in which the birds were taken;

(4) The State(s) and county(ies) in which the birds were taken; and

(5) The general purpose for which the birds were taken (such as for protection of agriculture, human health and safety, property, or natural resources).

(g) The Office of Management and Budget has approved the information collection requirements associated with this depredation order and assigned OMB Control No. 1018–0146. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

Dated: July 7, 2010.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–30288 Filed 12–1–10; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 75, No. 231
Thursday, December 2, 2010

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0019]

RIN 0579–AD28

Importation of Wood Packaging Material From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the importation of unmanufactured wood articles to remove the exemption that allows wood packaging material from Canada to enter the United States without first meeting the treatment and marking requirements of the regulations that apply to wood packaging material from all other countries. This action is necessary in order to prevent the dissemination and spread of pests via wood packaging material from Canada.

DATES: We will consider all comments that we receive on or before January 31, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0019* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0019, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0019.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. John Tyrone Jones, II, Trade Director, Forestry Products, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8860.

SUPPLEMENTARY INFORMATION:

Background

The regulations in Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles (7 CFR 319.40–1 through 319.40–11, referred to below as the regulations) restrict the importation of many types of wood articles, including items such as pallets, crates, boxes, and pieces of wood used to support and brace cargo. These types of articles are known as wood packaging materials (WPM). Introductions into the United States of exotic plant pests such as the pine shoot beetle (*Tomicus piniperda* (Scolytidae)) and the Asian longhorned beetle (*Anaplophora glabripennis* (Cerambycidae)) among others have been linked to the importation of WPM. These and other plant pests that are carried by some imported WPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

The variety of woods and lumber qualities used in the construction of WPM make it susceptible to infestation by a wide range of wood pests and diseases. WPM is frequently constructed from lower grade lumber derived from an assortment of woods. Additionally, lumber used in WPM construction may be fresh cut and may not have undergone sufficient processing or treatment to kill pests. Furthermore, WPM is very often reused, recycled, or remanufactured, and the true origin of any specific piece of WPM is difficult to determine, which means that its phytosanitary status cannot be fully ascertained.

Currently, § 319.40–3(a) provides a general permit that authorizes the importation of certain unmanufactured wood articles, including WPM, into the United States from Canada.[1] A general permit means the written authorization provided in § 319.40–3; no separate, specific permit is required. Under a general permit, unmanufactured wood articles from Canada may be imported into the United States provided they are accompanied by an importer document stating that the articles are derived from trees harvested in, and have never been moved outside of, Canada, and subject to the inspection and other requirements in § 319.40–9.

In contrast, WPM that is not from Canada is subject to the more rigorous requirements of the regulations for importing wood articles from all other countries except Canada. In a final rule published in the **Federal Register** on September 16, 2004 (69 FR 55719–55733; Docket No. 02–032–3), we amended those regulations in order to update the requirements for importation of WPM to correspond with standards established by the International Plant Protection Convention (IPPC) in International Standards for Phytosanitary Measures (ISPM) 15, "Guidelines for Regulating Wood Packaging Material in International Trade." Currently, paragraph (b) of § 319.40–3 of the regulations lists the IPPC requirements, which include either heat treatment or fumigation with methyl bromide and the proper marking of all treated materials with the approved IPPC symbol and specific control numbers.

The less restrictive importation requirements for WPM imported into the United States from Canada are based on the premise that the forests in the United States share a common forested boundary with Canada and, therefore, share, to a reasonable degree, the same forest pests. However, in a pest risk analysis (PRA) entitled "Risk analysis for the movement of wood packaging material (WPM) from Canada into the United States," we examined the pest risks associated with the movement of WPM into the United States from Canada. We determined that many North American forest pests, both indigenous and nonindigenous, occur in

[1] The general permit excludes articles from certain subfamilies of the family Rutaceae, regulated articles of pine that are not completely free of bark from Provinces in Canada that are considered to be infested or partially infested with pine shoot beetle, and regulated articles of ash (*Fraxinus* spp.).

both Canada and the United States. Some of these are unique forest pests and pathogens that are established in Canada and have the potential to be introduced or reintroduced into the United States via the movement of WPM, while others are pests that also occur in the United States but are subject to official control in order to prevent their further spread. Among the pests of concern are brown spruce longhorned beetle (*Tetropium fuscum*), European oak borer (*Agrilus sulcicollis*), emerald ash borer (*Agrilus planipennis*), Asian longhorned beetle (*Anoplophora glabripennis*), European woodwasp (*Sirex noctilio*), the fungus *Ophiostoma tetropii,* and vascular wilt (*Leptographium truncatum*). Copies of the PRA may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

Since the implementation of ISPM 15, the USDA and the Canadian Food Inspection Agency (CFIA) officials have participated jointly in the North American Perimeter Approach Wood and Wood Products Steering Committee to develop a harmonization plan that would entail both countries removing the exemption that allows wood packaging material to move from Canada into the United States and from the United States into Canada under general permit and not ISPM 15 guidelines. Coordination of this plan will take place though USDA and CFIA's participation in the North American Plant Protection Organization's Forestry Panel.

Based on the information contained in the PRA, and in keeping with our harmonization efforts with Canada relative to the regulation of WPM, we are proposing to amend the regulations in order to require that WPM from Canada meet the same conditions for importation as WPM from all other countries. This action is necessary in order to provide more consistent regulation of WPM from Canada as well as to reduce the risk of the introduction of dangerous plant pests on WPM moving from Canada into the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The analysis concludes that the proposed removal of the treatment and marking exemption would have a direct effect on Canadian manufacturers of pallets, which may affect importers and final consumers of goods transported on pallets imported from Canada. Because the cost of a pallet is a very small share of the bundle of goods transported on pallets, cost increases due to the treatment requirements are not expected to significantly affect domestic consumers and thus would not have a measurable impact on the flow of trade. The proposed changes are not expected to reduce the amount of goods shipped from Canada, as is evident from observing trends in imports from all other origins since implementation of the treatment standards in 2005.

The vast majority of potentially affected entities would be considered small. However, because the cost of a pallet is a very small share of the bundle of goods transported on pallets, cost increases due to treatment requirements for Canadian producers are not expected to significantly affect domestic consumers.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of wood packaging material from Canada, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. Comments on the environmental assessment may also be submitted using those methods listed under the heading **ADDRESSES** at the beginning of this proposed rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.40–3, paragraph (a) is amended by adding a new paragraph (a)(1)(i)(D) to read as follows:

§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

(a) * * *

(1) * * *

(i) * * *

(D) Regulated wood packaging material, whether in actual use as packing for regulated or nonregulated articles or imported as cargo.

* * * * *

Done in Washington, DC, this 16th day of November 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–30206 Filed 12–1–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1163; Directorate Identifier 2009–NM–233–AD]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

* * * * *

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

DATES: We must receive comments on this proposed AD by January 18, 2011.

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

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

For service information identified in this proposed AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail *gsc.op@328support.de;* Internet *http://www.328support.de.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1163; Directorate Identifier 2009–NM–233–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On June 3, 2008, we issued AD 2008–10–51, Amendment 39–15535 (73 FR 30752, May 29, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–10–51, additional inspections and a modification have been developed to address the onset of cracks in the affected wing panel. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2009–0194, dated September 1, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

To correct this unsafe condition, EASA issued Emergency AD 2008–0087–E [dated May 8, 2008] to require detailed visual inspections (DVI) of both the left (LH) and right (RH) wing panel rear trailing edge around rib 3 and rib 5 and a subsequent Eddy Current inspection (NDI) [non-destructive inspection] of the same area to detect cracks, follow-up repair actions when cracks are found, and the reporting of all findings. The TC [type certificate] holder has now developed a modification, consisting of the cold expansion of the former lower wing panel CAMLOC holes together with the installation of new attachment material that will prevent the onset of cracks in the affected wing panel.

For the reasons described above, this [EASA] AD retains the inspection and repair requirements of AD 2008–0087–E, which is superseded, adds repetitive inspections and a requirement to modify both the LH and RH wing panel rear trailing edges from rib 3 to rib 9. Modification does not constitute terminating action for the new repetitive inspection requirements of this AD.

The new inspections are repetitive eddy current inspections. The modification includes cold expansion of the former lower wing panel CAMLOC holes and installation of new attachment material. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

328 Support Services GmbH has issued Alert Service Bulletins ASB–328–57–037 and ASB–328J–57–015, both Revision 2, both dated May 20, 2008. 328 Support Services GmbH has also issued Service Bulletins SB–328–57–481 and SB–328J–57–230, both Revision 1, both dated October 15, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 49 products of U.S. registry.

The actions that are required by AD 2008–10–51 and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it would take about 8 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $11,600 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $601,720, or $12,280 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15535 (73 FR 30752, May 29, 2008) and adding the following new AD:

328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Docket No. FAA–2010–1163; Directorate Identifier 2009–NM–233–AD.

Comments Due Date

(a) We must receive comments by January 18, 2011.

Affected ADs

(b) This AD supersedes AD 2008–10–51, Amendment 39–15535.

Applicability

(c) This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes; all serial numbers; certificated in any category.

Subject

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

Reason

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

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

* * * * *

The new inspections are repetitive eddy current inspections. The modification includes cold expansion of the former lower wing panel CAMLOC holes and installation of new attachment material.

Compliance

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

Restatement of Requirements of AD 2008–10–51 With Updated Service Information

Repetitive Detailed Visual Inspections for Cracks

(g) Within 10 flight cycles, or 10 flight hours, or 7 days, whichever occurs first, after June 3, 2008 (the effective date of AD 2008–10–51): Accomplish a detailed visual inspection of both the left-hand (LH) and right-hand (RH) lower wing panel inboard and outboard of flap lever arm 1 (rib 5) for cracks, in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328J–57–015 or

ASB–328–57–037, both Revision 1, both dated May 8, 2008, as applicable; or 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008; as applicable. After the effective date of this AD, use only 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008. If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 50 flight hours. If any crack is detected, before further flight, do an eddy current inspection in accordance with paragraph (h) of this AD.

Repetitive Eddy Current Inspections for Cracks

(h) Within 400 flight hours or 3 months after June 3, 2008, whichever occurs first: Accomplish an eddy current inspection of both the LH and RH lower wing panel in the vicinity of rib 3 and inboard and outboard of flap lever arm 1 (rib 5) for cracks, in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 1, both dated May 8, 2008; or 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008; as applicable. After the effective date of this AD, use only 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008. Repeat the eddy current inspection thereafter at intervals not to exceed 400 flight cycles until the inspection required by paragraph (i) of this AD is accomplished. Accomplishment of the eddy current inspection terminates the detailed visual inspection required by paragraph (g) of this AD.

New Requirements of This AD

New Repetitive Intervals for Eddy Current Inspections

(i) Within 800 flight cycles after the last eddy current inspection required in paragraph (h) of this AD is done, or within 60 days after the effective date of this AD, whichever occurs later, do an eddy current inspection for cracking of the lower wing panel (outside) around the flap lever arm 1 (rib 5); in accordance with the Accomplishment Instructions of 328 Support Services Alert Service Bulletin ASB–328–57–037 (for Model 328–100 airplanes) or ASB–328J–57–015 (for Model 328–300 airplanes), both Revision 2, both dated May 20, 2008. Repeat the inspection thereafter at intervals not to exceed 800 flight cycles. Doing this inspection terminates the repetitive inspection requirements of paragraph (h) of this AD.

Inspection and Modification of Lower Wing Panel

(j) Within 24 months after the effective date of this AD, do an eddy current inspection of the lower wing panel (outside) around the flap lever arm 1 (rib 5). If no cracking is found, modify the lower wing panel by doing a cold expansion of the CAMLOC holes and installing new attachment material from rib 9 LH to rib 9 RH. Do all actions required by this paragraph in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–57–481 (for Model 328–100 airplanes) or SB–328J–57–230 (for Model 328–300 airplanes), both Revision 1, both dated October 15, 2009. Doing the modification does not end the repetitive inspection requirements of paragraph (i) of this AD.

Repair

(k) If any cracking is found during any inspection required by this AD, before further flight contact 328 Support Services GmbH for repair instructions and do the repair using a method approved by either the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent).

Inspections Accomplished According to Previous Issues of Service Bulletins

(l) Inspections accomplished before the effective date of this AD according to Dornier Alert Service Bulletin ASB–328–57–037 or Dornier Alert Service Bulletin ASB 328J–57–015, both Revision 1, both dated May 8, 2008, as applicable, are considered acceptable for compliance with the inspection requirements of paragraphs (i) and (j) of this AD.

Report

(m) At the applicable time specified in paragraph (m)(1) and (m)(2) of this AD: Send 328 Support Services GmbH a report of findings (both positive and negative) found during each inspection required by paragraphs (g), (h), and (i) of this AD. The report must include the inspection results, a description of any cracks found, the airplane serial number, and the number of landings and flight hours on the airplane. Send the report to 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; Telephone +49 8153 88111 6666; fax 49 8153 88111 6565; e-mail: *gsc.op@328support.de.*

(1) *For any inspection done after the effective date of this AD:* Within 30 days after the inspection.

(2) *For any inspection done before the effective date of this AD:* Within 30 days after the effective date of this AD.

FAA AD Differences

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

EASA AD 2009–0194 gives credit for eddy current inspections conducted in accordance with the maintenance review board tasks. We are not giving credit for those inspections.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

(4) *Special Flight Permits:* Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of paragraphs (g), (h), and (i) of this AD can be done if the following conditions are met:

(i) The initial inspection required by paragraph (g) of this AD must be accomplished.

(ii) If a crack indication exceeds 12.5 mm (0.49 inch), the Manager, International Branch, ANM–116, concurs with issuance of the special flight permits.

Related Information

(o) Refer to MCAI EASA Airworthiness Directive 2009–0194, dated September 1, 2009, and the service bulletins listed in Table 1 of this AD, for related information.

TABLE 1—SERVICE BULLETINS

Service Bulletin	Revision	Date
328 Support Services Alert Service Bulletin ASB–328–57–037	2	May 20, 2008.
328 Support Services Alert Service Bulletin ASB–328J–57–015	2	May 20, 2008.
328 Support Services Service Bulletin SB–328–57–481	1	October 15, 2009.
328 Support Services GmbH Service Bulletin SB–328J–57–230	1	October 15, 2009.

Issued in Renton, Washington on November 22, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30282 Filed 12–1–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

RIN 3038–AD99

Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies

AGENCY: Commodity Futures Trading Commission.

ACTION: Advanced notice of proposed rulemaking; request for comments.

SUMMARY: The Commodity Futures Trading Commission (the "CFTC" or "Commission") seeks comment on possible models for implementing new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") concerning the protection of collateral posted by customers clearing swaps.

DATES: Submit comments on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD99, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments by only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Regulation 145.9, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight (DCIO), at 202–418–5092 or *rwasserman@cftc.gov;* Martin White, Assistant General Counsel, at 202–418–5129 or *mwhite@cftc.gov;* or Nancy Liao Schnabel, Special Counsel, DCIO, at 202–418–5344 or *nschnabel@cftc.gov.* in each case, also at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Advanced Notice of Proposed Rulemaking ("ANPR") is intended to obtain comment from interested parties concerning the appropriate model for protecting the margin collateral posted by customers clearing swaps transactions. As discussed in more detail below, the statutory language in Dodd-Frank concerning the protection of swaps customer margin is substantially similar, though not identical, to analogous provisions in Section 4d(a) of the Commodity Exchange Act ("CEA") [1] applicable to the protection of collateral posted by customers with respect to exchange-traded futures. The Commission therefore is seeking comment on whether to adopt a similar model to protect the margin collateral posted by customers clearing swaps transactions as it currently employs with respect to exchange-traded futures, or whether another model is appropriate.

Section 4d(f)(2) of the CEA,[2] as added by Section 724 of Dodd-Frank, provides that "property of a swaps customer [received to margin a swap]* * * shall not be commingled with the funds of the futures commission merchant or be used to margin, secure or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.[3] Section 4d(f)(6) of the CEA makes it unlawful for a depository, including a derivatives clearing organization ("DCO"), that has received such swaps customer property "to hold, dispose of, or use any such * * * property as belonging to * * * any person other than the swaps customer of the futures commission merchant." [4]

The provisions applicable to the margin posted by exchange-traded futures customers are similar, but not identical. Section 4d(a)(2) provides that "property received [by a futures commission merchant] to margin, guarantee or secure the [exchange-traded] contracts of any customer of such [futures commission merchant] * * * shall not be commingled with the funds of such commission merchant or be used to guarantee the trades or contracts * * * of any person other than the one for whom the same are held." [5] Section 4d(b) makes it unlawful for a DCO that has received such customer property "to hold, dispose of, or use any such * * * property as belonging to * * * any person other

[1] 7 U.S.C. 6d(a).

[2] 7 U.S.C. 6d(f)(2).

[3] Section 4d(f)(3)(A) of the CEA provides an exception permitting commingling "for convenience."

[4] 7 U.S.C. 6d(f)(6) (emphasis added). This section was added by Section 724(a) of Dodd-Frank, Public Law 111–203, 124 Stat. 1376.

[5] Section 4d(a)(2) provides a similar exception permitting commingling "for convenience.".

than the customers of such futures commission merchant."

Commission Regulation ("Reg. § ") 1.22[6] prohibits a futures commission merchant ("FCM") from using, or permitting the use, of one futures' customer's funds to margin, guarantee or secure another customer's futures trades or contracts. Thus, if a futures customer sustains losses sufficient to cause it to have a debit balance (i.e., the customer owes the FCM money), the FCM must deposit its own capital to "top up" the loss. Pursuant to existing industry custom and Reg § 1.20(b), however, futures commission merchants ("FCMs") segregate futures customer property posted as collateral with a DCO on an omnibus basis: Such property is treated separately from the property of the FCM, but futures customers are treated as a group, rather than individually.

Thus, if a futures customer suffers sufficient losses that the customer's debit balance exceeds the FCM's available capital, and such customer (the "defaulting customer") fails to promptly pay such loss, the FCM may, as a practical matter, be unable to "top up" the loss, and the FCM may be unable to make a required payment to a DCO with respect to that FCM's customer account. Such an FCM would then be a defaulter to the DCO (a "Defaulting FCM"). In case of such an FCM default in the futures customer account, the DCO is permitted to use the collateral of all customers of the Defaulting FCM to meet the net customer obligation of the Defaulting FCM to the DCO (including the use of any customer gains to meet customer losses), without regard to which customers gained or lost, or which customers defaulted or made full payment.

In such a case, customers of the Defaulting FCM other than the defaulting customer may lose collateral they have posted with the Defaulting FCM, and/or gains on their positions. The risk these other customers face shall be referred to as "fellow-customer risk."

II. Maximizing Customer Protection and Minimizing Cost

In considering how to implement Section 4d(f) of the Dodd-Frank Act, the Commission and its staff have heard countervailing concerns from various stakeholders. Some customers have noted that, in the context of uncleared swaps that they currently engage in—and may be obligated to clear under Dodd-Frank[7]—they are able to negotiate for individual segregation, with independent third parties, of collateral that they post for such uncleared swaps. These customers contend that it is inappropriate that they should be subject to an additional risk (fellow-customer risk) when clearing their positions.[8] Pension funds, in particular, are concerned about their obligations under the Employee Retirement Income Security Act, and about having their collateral used to subsidize others.[9]

FCMs and DCOs, on the other hand, point out that models of protecting swaps customer collateral that are different from the current model for protecting futures customer collateral would bring significant added costs, which they aver would ultimately be borne by the customers. Moreover, the use of fellow-customer collateral is included in existing DCO models for dealing with member defaults. The Commission has proposed to require DCOs to maintain default resources sufficient to

> [e]nable the derivatives clearing organization to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the derivatives clearing organization in extreme but plausible market conditions.[10]

Systemically-important DCOs would be required to maintain default resources sufficient to cover a default by the two clearing members creating the largest combined financial exposure in such conditions.[11]

Typically, DCOs use a variety of resources in addressing defaults arising from a member's customer account.[12] These resources, which are frequently referred to as a "waterfall," typically include, in order, the property of the Defaulting Member, the margin posted on behalf of all of that members' customers, a portion of the capital of the DCO, and the default fund contributions of other members of the DCO.[13]

If the collateral of non-defaulting swaps customers is not available as a default resource, DCOs will need to change their models for sizing their default waterfalls, and/or the size of the components of those default waterfalls. One means to do this would be to increase the collateral required to margin each customer's positions. One DCO estimated that it might need to increase collateral from a 99% confidence level to a 99.99% confidence level, which would cause an increase in required collateral of approximately 60%.[14] These increases in required margin levels would be passed on to customers, as an FCM is required to collect margin from a customer at a level no less than that imposed by the clearing house on the clearing member FCM. The Commission requests that DCOs provide data in support of their assertions.

An alternative approach to reacting to changes in the model for sizing default waterfalls would be to increase clearing members' default fund contributions. FCMs note that if they are required to commit added capital to clearing, they would pass such costs on to customers. Certain models for protecting collateral posted by customers clearing swaps could also cause significant added administrative costs, in requiring more transactions per customer every day, which costs would also be passed on to customers.[15] The Commission requests that FCMs provide data supporting these assertions.

The Commission is seeking to achieve two basic goals: Protection of customers and their collateral, and minimization of costs imposed on customers and on the industry as a whole. It is considering four models of achieving these goals with respect to cleared swaps. These are listed in order below, from most protective of customer collateral to least protective of customer collateral.

Each of these various models would potentially impose different levels of costs upon the various parties—*i.e.,* customers, FCMs, and DCOs—both pre- and post-default. Accordingly, the Commission seeks to obtain further information about the costs and benefits of such models.

III. Description of the Models

The Commission seeks comment on each of the following four potential models, as well as any additional models that may be proposed by commenters:

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[6] 17 CFR 1.22.

[7] *See generally* CEA 2(h), added by Dodd-Frank 723(a).

[8] *See, e.g., Staff Roundtable on Individual Customer Collateral Protection* ("Roundtable") at 20–21 (Statement of Mr. Szycher), 12, 79 (Statements of Mr. Kaswell), 10 (Statement of Mr. Thum), *available at http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_6_SegBankruptcy.html.*

[9] Roundtable at 18 (Statement of Mr. Szycher).

[10] *See Financial Resources Requirements for Derivatives Clearing Organizations,* 75 FR 63113, 63118 (proposed regulation 39.11(a)(1)) (Oct. 14, 2010).

[11] *Id.* at 63119 (proposed regulation 39.29(a)).

[12] Customers would not be exposed to loss in the case of a default arising from their FCM's proprietary account.

[13] *See, e.g.,* CME Rule 802.

[14] *See, e.g.,* Roundtable at 137–138 (Colloquy between Ms. Taylor and Mr. Maguire).

[15] *See, e.g.,* Roundtable at 62–73 (Statements of Ms. Burke).

(1) *Full Physical Segregation*—Each customer's cleared swaps account, and all property collateralizing that account, is kept separately for and on behalf of that cleared swaps customer, at the FCM, at the DCO, and at each depository.

a. *Impact on Customers' Risk:* Each customer is protected from losses on the positions or investments of any other customer.

b. *Impact on DCO Default Resources:* The collateral attributable to any non-defaulting customer is not available as a DCO default resource

(2) *Legal Segregation With Commingling*—The collateral of all cleared swaps customers of an FCM member of a DCO is *kept* on an omnibus basis, but is attributed to each customer based on the collateral requirements, as set by the clearinghouse, attributable to each customer's swaps.

a. *Process:* Payments and collections *of* both initial margin and variation margin between the DCO and its member FCMs customer accounts are made on an omnibus basis. Each FCM member reports to the DCO, on a daily basis, the portfolio of rights and obligations attributable to each cleared swaps customer. The performance bond collateral required at the DCO for each customer's swaps is a function, defined by the DCO, of that portfolio of rights and obligations. The collateral required for all of an FCM member's customers is the sum of the collateral requirements for each of such customers.

b. *Posting Collateral:*

i. The FCM may post the total required customer margin on an omnibus basis, without regard to the customer to whom any particular item of collateral (*e.g.,* a particular security) belongs.

ii. If the FCM loans to a customer any portion of the property necessary to margin that customer's positions, that collateral is treated at the DCO as belonging to the customer, and at the FCM as a debt from the customer to the FCM.

iii. The DCO may require an FCM to post its own capital as collateral for its guarantee of its customers.

c. *Use of Collateral in Case of Default*—If the FCM defaults, the DCO must treat each customer's swaps positions, and related margin (based on the positions reported as of the day previous to the default) individually, debiting each customer's account with losses attributable to that customer's positions, and crediting each customer's account *with* gains attributable to that customer's positions. However, if the value of the margin account is reduced below the required level as a result of market fluctuations in the value of the collateral, the margin attributed to each customer would be adjusted accordingly on a pro rata basis. The DCO has recourse to any collateral posted by the FCM as part of its own capital.

d. *Transfer or Return of Positions and Collateral*—The DCO may, at its election, transfer the swaps positions and *related* collateral of any or all of the defaulting FCM's customers to a willing transferee, or liquidate such swaps positions and return the remaining collateral to the FCM (or its trustee in bankruptcy).

e. *Impact on Customers' Risk*—Each customer of the defaulting FCM is protected from losses on the positions *of* other customers, but bears some risk of loss on the value of collateral (subject to the investment restrictions of Commission Regulation 1.25).[16]

f. *Impact on DCO Default Resources*—The remaining collateral attributable to each of the defaulting FCM's customers is not available as a DCO Default Resource.

(3) *Moving Customers to the Back of the Waterfall*—This model is similar to Model 2 above, Legal Segregation With Commingling, with two modifications:

a. The DCO may use the remaining *collateral* attributable to each of the defaulting FCM's customers as a DCO default resource.

b. Before using the remaining *collateral* attributable to any customer, however, the DCO must first apply (i) the DCO's contribution to its default resources from its own capital and (ii) the guarantee fund contributions of all members of the DCO.

c. *Impact on Customers' Risk*—Each customer of the defaulting FCM is protected from losses on the positions of other customers, except in the most extreme of circumstances (a default which consumes the DCO's guarantee fund), in which case the customers are at risk of losing their collateral. Customers also bear some risk of loss on the value of collateral (subject to the investment restrictions of Regulation 1.25).

d. *Impact on DCO Default Resources*—The remaining *collateral* attributable to each of the defaulting FCM's customers is available as a DCO Default Resource. Because the total required default resources (including the DCO's contribution and the guarantee fund) are substantial,[17] the remaining collateral of customers will only be used in the case of an extremely large default.

(4) *Baseline Model*—The current approach to futures. The rights and obligations arising out of the cleared swaps positions of all cleared swaps customers of an FCM member of a DCO, as well as the money, securities and other property collateralizing such rights and obligations, are held at the DCO on an omnibus basis. The DCO has recourse to all such collateral in the event of any failure of the FCM member to meet a margin call (initial or variation) with respect to the FCM's cleared swaps customer account at that DCO.

a. *Impact on Customers' Risk*—Each *customer* of the defaulting FCM is exposed to loss of their collateral due to losses on the positions of other customers. Customers also bear some risk of loss on the value of collateral (subject to the investment restrictions of Regulation 1.25).

b. *Impact on DCO Default Resources*—The *remaining* collateral attributable to each of the defaulting FCM's customers is fully available as a DCO default resource, and may be used before the DCO's contribution or the default fund contributions of other clearing members.

IV. Cost and Benefit Questions

The Commission seeks comment on all of the following questions from all members of the public, but will direct specific questions to three particular groups of stakeholders:

(1) Cleared Swaps Customers, including asset management firms and others who may act on their behalf.

(2) FCMs who currently intermediate swaps on behalf of customers, or who intend to do so in the future, or trade organizations with FCM members.

(3) DCOs.

1. For Cleared Swaps Customers

a. What are the benefits of *each* of the models relative to the baseline model and relative to other models?

b. What costs would you expect to incur for each of the models relative to the baseline model? Please provide a detailed basis for that estimate.

c. How should the Commission balance such costs and benefits?

2. For FCMs

For Each Model (Other Than the Baseline Model)

a. Compliance:

i. What compliance activities (including gathering of information) would you need to perform as a result of that model that you do not perform now (*i.e.,* as part of the baseline model).

ii. What is a reasonable estimate of the initial and annualized ongoing cost of

[16] 17 CFR 1.25.

[17] *See supra* footnotes 10–11.

such incremental activities (relative to the baseline model) for your institution? Please provide a detailed basis for that estimate.

iii. How can such costs be estimated industry-wide? Please provide a detailed basis for that estimate?

b. Risk environment:

i. How do you see the industry adapting to the risk changes attendant to the model?

ii. What types of costs would you expect your institution to incur if the industry adapts to that model in the most efficient manner feasible? How are these costs different from the costs you would incur under the baseline model?

iii. What is a reasonable estimate of the initial and annualized ongoing incremental cost incurred by your institution? Are these costs the same for each FCM clearing member, or a function of activity level? Please provide a detailed basis for that estimate.

iv. How can such costs be estimated industry-wide? Please provide a detailed basis for that estimate?

c. What benefits does the model present relative to the baseline model, and relative to other models?

3. For DCOs

For Each Model (Other Than the Baseline Model)

a. Compliance (internal):

i. What compliance activities (including gathering of information) would you need to perform as a result of that model that you do not perform now (*i.e.,* as part of the baseline model)?

ii. What is a reasonable estimate of the initial and annualized ongoing cost of such incremental activities (relative to the baseline model) for your DCO? Please provide a detailed basis for that estimate.

b. Compliance (members):

i. What compliance activities (including gathering of information) would you expect each of your members to perform as a result of that model that they do not perform now (*i.e.,* as part of the baseline model).

ii. What is a reasonable estimate of the initial and annualized ongoing cost of such incremental activities (relative to the baseline model) for each such member? Do these costs vary with the member's level of activity? How? Please provide a detailed basis for your estimates.

iii. What is a reasonable estimate of the initial and ongoing costs of such activities across your membership? May there be some members who do not incur these costs? Please provide a detailed basis for these estimates.

c. Changes to default management structure:

i. What changes to your default management structure (relative to the baseline model) would the model require?

ii. Costs to the DCO

1. What types of costs would these changes impose on the DCO if the industry adapts to that model in the most efficient manner feasible? How are these costs different from the costs the DCO would incur under the baseline model?

2. What is a reasonable estimate of the initial and annualized ongoing incremental cost to the DCO? Please provide a detailed basis for that estimate.

iii. Costs to members

1. What types of costs would these changes to the DCO's default management impose on members if the industry adapts to that model in the most efficient manner feasible? How are these costs different from the costs the members would incur under the baseline model?

2. What is a reasonable estimate of the initial and annualized ongoing incremental cost to each member? Are these costs the same for each member, or are they a function of activity level? Please provide a detailed basis for that estimate.

3. What is a reasonable estimate of the initial and ongoing costs of such activities across your membership? May there be some members who do not incur these costs? Please provide a detailed basis for these estimates.

iv. To what extent do the costs identified above represent increased costs to the system as a whole (*i.e.,* customers, FCMs, and DCOs considered together) and to what extent do they represent a shift of risk and/or cost between those groups?

b. What benefits does the model present relative to the baseline model, and relative to other models?

For all commenters:

2. *Optional Models*

A point frequently raised is that individual customer protection should be made available on an optional basis. There are questions as to how such a model could be implemented, and how the costs imposed by a customer obtaining individual protection could be attributed to—and charged to—that customer. For example, in the "Full Physical Segregation" and "Legal Segregation with Commingling" models discussed above, a significant portion of the marginal costs may arise from the fact that the collateral posted by the opting-out customer would not be available in the event of a default caused by other customers of the same FCM. How could a payment by the opting-out customer be used to address the changes to the DCO's default management structure that would be attributable to that opting out? Considered from another perspective, how much cost would be avoided from an optional as contrasted to a mandatory implementation of each of the models above? Also, what would be the effect on customers of an FCM in bankruptcy if different DCOs of which the FCM was a member adopted different voluntary models? If a marketplace in which varying models were in use was otherwise desirable, what changes to the Regulation Part 190 rules regarding bankruptcy account classes could or should be made to accommodate such variety?

3. *Moral Hazard: Customers risk-managing their FCMs:*

Another point frequently raised is that customers should risk-manage their FCMs, and provide market discipline by doing business with FCMs that pose less risk. DCOs already monitor the eligibility of their members, supervising the member's risk relative to collateral and capital, and considering members' risk management.[18] The Commission is aware of concerns that, if the risk that customers will lose swaps collateral posted at an FCM is minimized, there will be less incentive for FCMs to maintain capital in excess of the minimum levels required by the Commission and the DCOs of which such FCMs are members. These concerns lead to a number of questions:

a. To what extent would each model lead to moral hazard concerns? How, if at all, could such concerns be addressed?

b. Are the capital requirements currently imposed by the Commission on FCMs and by DCOs on their clearing members sufficient? If not, what steps should DCOs or the Commission take to address this insufficiency?

c. Do the rules and procedures of DCOs currently provide adequate tools and incentives for DCOs to supervise their clearing members so as to mitigate the risk of default? If not, what steps should DCOs or the Commission take to address this inadequacy?

In analyzing costs, the Commission needs to consider the additional cost incurred by customers risk-managing their FCMs on an initial and ongoing

[18] *See* Sections 5b(c)(2)(C)(i)(I), (c)(2)(C)(ii), (c)(2)(D) of the CEA (participant eligibility and risk management).

basis.[19] This leads to a number of questions:

d. What information would each customer need, on an initial and an ongoing basis, to effectively manage the risk posed by fellow-customers at an FCM?

e. What information should be provided to each customer regarding the FCM's risk management policies, and how those policies are, in fact, implemented with respect to other customers, on both an initial and ongoing basis?

f. What information should be provided to each customer regarding fellow-customer risk, on both an initial and ongoing basis?

g. What is or would be the cost, per customer, on an annualized basis, of conducting this risk management?

h. What is or would be the cost to the industry as a whole, on an annualized basis, of customer-conducted FCM risk management?

V. Other Questions

1. Did Congress evince an intent as to whether the Commission should adopt any one or more of these models?

How do commenters view Interpretation 85–3, and how should it inform the rulemaking on segregation of collateral for cleared swaps customers? (A copy of this interpretation is attached as an appendix to this Request for Comment.)

Issued in Washington, DC, on November 19, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

APPENDIX

Interpretative Statement, No. 85–3, Regarding the Use of Segregated Funds by Clearing Organizations Upon Default by Member Firms. (OGC Aug. 12, 1985)

Use of Segregated Funds by Clearing Organizations Upon Defaults By Member Firms

The rights of a clearing organization to make use of margin funds deposited by a clearing member firm that has defaulted on an obligation to the clearing organization are defined by the rules and by-laws of the clearing organization subject to limitations imposed by the Commodity Exchange Act ("Act") and the rules and regulations promulgated thereunder, 17 CFR 1, *et seq.* (1984). Clearing organization rules and by-laws commonly provide that upon the failure of a member firm to satisfy an obligation owed the clearing organization, the clearing organization may use all margin funds and property of the member firm within the clearing organization's custody to satisfy the firm's obligations to the clearing organization. In our view, Section 4d(2) of the Act does not preclude the clearing organization from applying all margin deposits of a defaulting firm to discharge such firm's obligations on behalf of the customer account for which they were deposited with the clearing organization. The clearing organization may be precluded from exercising such rights in limited circumstances, however, by reason of its knowledge of or participation in a violation of the Act or other provision of law by the defaulting firm or other parties that renders its rights to such funds inferior to those of the clearing firm's customers.

Section 4d(2) of the Act, 7 U.S.C. 6d, defines the manner in which futures commission merchants ("FCMs"), clearing organizations, and other depositories of funds deposited by commodity customers to margin or settle futures transactions, or accruing to customers as the result of such trades, must deal with such funds. Section 4d(2) requires that FCMs "treat and deal with" funds deposited by a customer to margin or settle trades or contracts or accruing as the result of such trades or contracts "as belonging to such customer," separately account for such funds, and refrain from using such funds "to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held." Section 4d(2) specifically authorizes FCMs to commingle such funds, for purposes of convenience, in the same account or accounts with any bank, trust company or clearing organization of a contract market. This provision also authorizes withdrawals from such funds of "such share thereof as in the normal course of business shall be necessary" to margin, guarantee, secure, transfer, adjust, or settle trades or contracts, "including the payment of commissions, brokerage, interest, taxes, storage and other charges, lawfully accruing in connection with such contracts and trades."

The final sentence of Section 4d(2) defines the obligations of clearing organizations, depositories and all other recipients of customer margin funds and property in the following terms:

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

This provision prohibits clearing organizations and all other depositories of customer funds from using such funds to discharge proprietary obligations of the depositing FCM or for any purpose other than to margin, guarantee, secure, transfer, adjust, or settle trades or contracts of the depositing firm's customers, including the payment of commissions and other charges "lawfully accruing in connection with" such contracts and trades.

In our view, Section 4d(2)'s provisions with respect to clearing organizations' treatment of customer funds must be construed in light of the fact that clearing organizations' direct customers are, generally, clearing firms, not the ultimate "customers" who entered into the futures contracts and options positions accepted for clearance by the clearing organization. Margin deposits posted with clearing organizations by their member firms normally consist, at least in part, of funds belonging to clearing firm customers, whose margin deposits were posted with the clearing firm and subsequently drawn upon by the clearing firm to satisfy its margin obligations to the clearing organization. The clearing organization normally has no direct dealings with such customers and has knowledge neither of their specific identities nor of the extent of their respective ownership interests in margin funds posted by its clearing firms. Consequently, to the extent that Section 4d(2) of the Act requires that clearing organizations use margin deposits on behalf of the "customers of such [depositing] futures commission merchant," we are of the view that it requires only that the clearing organization use such funds as the property of the clearing firm's customers collectively, but does not require the clearing organization to treat such funds as the property of the particular customers who deposited them or to whose positions they have accrued.

This view accords with the legislative history of Section 4d(2) of the Act. The Act did not specifically govern the treatment of commodity customer funds by clearing organizations and other depositories of customer margin funds until the enactment of Section 4d(2)'s final paragraph, quoted above, in 1968. The legislative history of this provision reflects Congress's intention to ensure that customer funds would not be used to discharge the general obligations of the FCM or otherwise diverted from their lawful purposes. According to the Senate Report, for example, the amendment was proposed "to prohibit expressly customers' funds from being used to offset liabilities of the futures commission merchants or otherwise being misappropriated." S. Rep. No. 947, 90th Cong. 2d Sess. 7 (1968). *See also* H.R. Rep. No. 743, 90th Cong., 1st Sess. 4–5 (1967).

The Commodity Exchange Authority's Administrator described the 1968 amendment as one which would afford additional protection against a situation presented in the De Angelis salad oil case "in which one of the banks actually took over funds of customers of one of the brokerage firms to offset liabilities of the firm." *Amend the Commodity Exchange Act:* Hearings on H.R. 11930 and H.R. 12317 Before the House Comm. on Agriculture 57 (1967) (Testimony of Alex C. Caldwell, Administrator, Commodity Exchange Authority). The proposed amendment would require that banks and other depositories "keep separate the funds of the customers and of the brokerage firms which they do not have to do now." *Id.* The Act's legislative history thus evinces an intention that depositories treat customers' funds as the property of the

[19] *Cf.* Roundtable at 45–46 (Statement of Mr. Prager) (DCOs have advantages over clients in conducting risk management of FCMs).

customers of the depositing FCM, as distinguished from the FCM's own property or that of any other person.

Our conclusion that Section 4d(2) generally allows clearing organizations to treat customer funds as the property of the depositing firm's customers, collectively, without regard to the respective interests of particular customers, also finds support in the legislative history of the Bankruptcy Reform Act of 1978. In recommending new provisions to govern bankruptcy liquidations of commodity firms, the Commission described the clearing house system then (and now) operant in the futures market as one in which "a clearing house deals only with its clearing members" and thus "does not know the specific customer on whose behalf a particular contract was entered into by one of its clearing members." *Bankruptcy Act Revision:* Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil and Constitutional Rights, House Comm. on the Judiciary, 94th Cong., 2d Sess. 2377, 2395 (Statement of William T. Bagley) (1976). The Commission explained that this system allows a clearing organization to use "whatever funds are on deposit with it on behalf of customers to meet variation margin calls with respect to customers' trades or contracts" and, following a clearing member default, the defaulting firm's "original margin deposits are immediately available to offset any losses the clearing house might incur" as a result of answering variation margin calls to the defaulting firm. *Id.* at 2397, 2405.

The Commission's regulations are also consistent with the view that the clearing organization's direct obligations under Section 4d(2) include an obligation to treat customer funds as the property of the depositing FCM's customers but do not include a duty to separately account for or to employ such funds as the property of particular customers. Regulation 1.20(b), 17 CFR 1.20(b) (1984), for example, requires that a clearing organization separately account for and segregate all customers' funds received from a member of the clearing organization to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's customers and all money accruing to such customers as the result of such trades, contracts, or commodity options "as belonging to such commodity or option customers," and specifies that a clearing organization shall not hold, use or dispose of such customer funds "except as belonging to such commodity or option customers." 17 CFR 1.20(b) (1984).[1]

Regulation 1.22, 17 CFR 1.22 (1984), which precludes FCMs from using or permitting the use of "the customer funds of one commodity and/or option customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such customer or option customer," refers only to FCMs and, hence, does not govern clearing organizations or other depositories of customer funds.[2]

Our conclusion that Section 4d(2) does not preclude a clearing organization from using all margin funds deposited by a clearing member firm to satisfy obligations arising from the account for which such funds were deposited reflects the essential function of margin deposits in the futures markets' clearing system. Clearing organizations generally stand as guarantors of the net futures and options obligations of the member firms and require margin deposits as security for the performance of obligations which, in the event of a member's default, the clearing organization must discharge. Margin deposits at the clearing level thus facilitate the clearing organization's performance of its guarantee obligations, serving to confine losses stemming from a clearing firm default to the defaulting firm and preventing their spread to the market as a whole.

In sum, we conclude that clearing organization rules and by-laws awarding clearing organizations the right to apply all customer margin funds within their custody to satisfy nonproprietary obligations of defaulting clearing firms are not inconsistent with Section 4d(2) of the Act or the Commission's regulations. Clearing organizations' rights with regard to the use of customer margin deposits of their member firms are not, however, wholly unlimited. A clearing organization may not use the margin deposits of one clearing member firm to satisfy obligations of another clearing firm or of any other person. In addition, as noted above, the final paragraph of Section 4d(2) of the Act was enacted to present use of customer funds to satisfy the FCM's own obligations. Consequently, customer margin funds deposited by a member FCM may not be used to margin, guarantee or settle the futures or options transactions or to satisfy any other proprietary obligation of the depositing firm. Such funds must be used to margin, guarantee, secure, or settle trades or contracts of the depositing FCM's customers or for charges "lawfully accruing in connection with" such contracts and not for any other purpose.[3] Finally, a clearing organization's rights with respect to the use of customer margin funds may be limited in particular circumstances by reason of the clearing organization's knowledge of or participation in a violation of the Act or other provision of law that precludes it from obtaining rights to such funds superior to those of one or more customers of the defaulting clearing member. Such a violation could occur, for example, in circumstances in which the clearing organization received particular margin funds with actual knowledge that the depositing firm has breached its duty under Section 4d(2) to segregate and separately account for customer funds and that the funds in question have been deposited with it to margin, secure, guarantee or settle the trades or contracts of a person other than the customer who deposited such funds or to whom they have accrued. The clearing organization's knowing participation in such use of customer funds could subject it to aiding and abetting liability under Section 13(a) of the Act and would preclude it from obtaining rights to such funds superior to those of the innocent customer.

Statement of Chairman Gary Gensler: Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies

I support the advance notice of proposed rulemaking concerning protection of collateral of customers entering into cleared swaps. There has been much public input into these matters, but I think it is appropriate to have a formal ANPR soliciting input on a number of options and questions on how best to protect customers' collateral in the event of another customer's default. This is particularly important as we move forward to implement Congress's mandate that for the first time standardized swaps

[1] To the extent that the final sentence of Regulation 1.20(a), 17 CFR 1.20(a) (1984), may be read to require that clearing organizations treat customer funds as the property of the particular customer who deposited them, we consider it inconsistent with Regulation 1.20(b), which more specifically addresses the obligations of clearing organizations, and with this agency's view of clearing organizations' obligations. The current language of Regulation 1.20(a)'s final sentence apparently reflects an unintentionally broad modification of that provision made in connection with amendments of a number of Commission regulations to reflect establishment of the Commission's exchange-traded options program. Until these 1981 revisions of the Commission's regulations, Regulation 1.20(a)'s last sentence referred to "customers" in the plural, made no express reference to clearing organizations and was substantially consistent with the final sentence of Section 4d(2). The Commission's proposed rules regarding exchange-traded options would have modified this language only to the extent of including option customers within its protections: "Nor shall any such funds be held, disposed of, or used as belong [sic] to the depositing futures commission merchant or any person other than the commodity or option customers of such futures commission merchant." 46 FR 33315 (1981). As adopted, however, the Commission's final rules concerning the regulation of exchange-traded commodity options included Regulation 1.20(a)'s final sentence in its current form, a modification that apparently was not intended to be substantive. In the preamble to these rules, the Commission stated that it was adopting revised Regulations 1.20 through 1.30 "essentially as proposed." 46 FR 54508 (1981). We suggest that a technical amendment to Regulation 1.20(a) be proposed in the near future to conform its final sentence to its intended meaning.

[2] *See also* Regulation 1.36, which governs recordkeeping concerning securities and other property received from customers and option customers. Regulation 1.36 requires FCMs to maintain a record, showing "separately for each customer or option customer" the securities or property received, name and address of the depositing customer and other pertinent information. By contrast, clearing organizations with which clearing member firms deposit securities or property belonging to particular customers or option customers of such members in lieu of cash margin are required to maintain records "which will show separately for each member" the date of receipt of such securities and property and other pertinent data but are not required to maintain records of the names of the particular customers of the member firm from whom such securities and property were received.

[3] This prohibition includes a proscription against the use of customer margin funds deposited in connection with futures or option transactions to discharge obligations, including customers' obligations, incurred in connection with transactions that are not within the purview of the Act or the rules and regulations promulgated thereunder.

must be cleared. I am hopeful that we will hear from a broad range of market participants, including clearinghouses, futures commission merchants, pension funds, asset managers and other end-users, on the costs, benefits and feasibility of various approaches to protecting customers' money.

[FR Doc. 2010–29836 Filed 12–1–10; 8:45 am]

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Notices

Federal Register
Vol. 75, No. 231
Thursday, December 2, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0107]

Notice of Request for Extension of Approval of an Information Collection; Update of Nursery Stock Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request extension of approval of an information collection associated with regulations for the importation of nursery stock into the United States.

DATES: We will consider all comments that we receive on or before January 31, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0107* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0107, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0107.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of nursery stock into the United States, contact Mr. Alex Belano, Branch Chief, Risk Management and Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Update of Nursery Stock Regulations.

OMB Number: 0579–0190.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to restrict the importation, entry, and interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture. APHIS regulations contained in "Subpart—Nursery Stock Plants, Roots, Bulbs, Seeds, and Other Plant Products (§§ 319.37 through 319.37–14) restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting or propagation.

In accordance with these regulations, individuals who are involved in growing, exporting, and importing nursery stock must provide information to APHIS about the commodities they wish to bring into the United States. This information serves as the supporting documentation needed to issue required forms and documents, and is vital to help ensure that plant pests are not introduced into the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Foreign national plant protection organizations; exporters and importers of nursery stock.

Estimated annual number of respondents: 30.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 150.

Estimated total annual burden on respondents: 75 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC this 16th day of November 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–30211 Filed 12–1–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0111]

APHIS User Fee Web Site

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service charges user fees, as authorized by law, to recover the costs of providing certain services. This notice announces the availability of a Web site that contains information about the Agency's user fees.

ADDRESSES: The Agency's user fee Web site is located at: *http://www.aphis.usda.gov/userfees/index.shtml.*

FOR FURTHER INFORMATION CONTACT: For information about the Web site, contact Ms. Cindy Howard, Assistant Deputy Administrator for Regulatory Coordination, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737; (301) 734–5957. For information about APHIS' user fees, contact Mrs. Kris Caraher, Section Head, User Fees Section, Financial Services Branch, FMD, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737; (301) 734–0882.

SUPPLEMENTARY INFORMATION: A user fee is a charge to identifiable recipients (*e.g.,* individuals or firms)—users—of goods and services provided by the Federal Government. The Federal Government charges user fees only when prescribed or authorized by law. User fees are charged for goods and services that directly benefit the recipient or that are necessary to protect the public from incurring costs that may result from the recipient's activities. Through the user fee, recipients of the goods or services pay the Federal Government for the cost of providing the goods or services. The cost is not borne by the general taxpayer.

APHIS charges a user fee to recover the costs of providing the following goods and services:

- Agricultural quarantine and inspection (AQI) services
- Export certification of plants and plant products
- Veterinary services for imports and exports of live animals and products
- Veterinary diagnostic goods and services

Additionally, when Federal employees provide certain import- and export-related services funded by user fees outside their normal working hours, APHIS may charge an additional fee to cover the costs of overtime. This category of services is called reimbursable overtime services.

For each of these user fee programs, the Web site provides a description of the services or goods for which a fee is charged, the statutory authority for APHIS to collect and retain the fees, the current rates, how APHIS determined the amount of the fees, any scheduled rate changes, and other information pertinent to that user fee program. In the near future, we plan to add information on the status of collections and expenditures in each user fee program.

The Web site also answers general questions about APHIS' user fees, including:

- Why does APHIS charge user fees for some activities and not others?
- What happens to the money that APHIS collects through user fees?
- How does APHIS determine the amount of its fees?
- How reliable are the projections upon which the fees are based?
- What happens when variable factors fluctuate?
- How often will user fees be adjusted?
- How often are the fees reviewed?
- What is the process for changing the fees?

APHIS developed the user fee Web site to enhance transparency and predictability regarding its user fee programs. The Web site will include a way in the near future for the public to submit comments or questions to APHIS on either the Web page itself (*e.g.,* ease of use, content) or on the user fee programs or specific fees. We also plan to allow interested members of the public to sign up to receive notifications when changes are made to the user fee Web page.

Done in Washington, DC, this 16th day of November 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–30208 Filed 12–1–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Minnkota Power Cooperative, Inc.: Bemidji to Grand Rapids 230 kV Transmission Line Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of Record of Decision.

SUMMARY: The Rural Utilities Service, hereinafter referred to as RUS and/or the Agency, has issued a Record of Decision (ROD) for the Environmental Impact Statement (EIS) for the proposed Bemidji to Grand Rapids 230 kV Transmission Line Project (Project) in Beltrami, Hubbard, Itasca, and Cass counties, Minnesota. The Administrator of RUS has signed the ROD, which is effective upon signing. The RUS, U.S. Forest Service Chippewa National Forest (CNF), U.S. Army Corps of Engineers (USACE), and Leech Lake Band of Ojibwe Division of Resource Management (LLBO DRM) cooperated in the development of a Final Environmental Impact Statement (Final EIS) prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) and in accordance with the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508), and RUS's NEPA implementing regulations (7 CFR Part 1794). RUS is the lead federal agency as defined at 40 CFR 1501.5, and CNF and USACE are cooperating agencies. LLBO DRM accepted an invitation to participate as a cooperating agency. As the lead federal agency, and as part of its broad environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C 470f) and its implementing regulation "Protection of Historic Properties" (36 CFR Part 800). The Final EIS evaluated the potential environmental impacts of and alternatives to the Project proposed by Minnkota Power Cooperative, Inc. (Minnkota) for RUS financing to construct the 230 kilovolt (kV) transmission line between the Wilton Substation near Bemidji, Minnesota and the Boswell Substation near Grand Rapids, Minnesota. The Project is being jointly developed by Minnkota, Otter Tail Power Company, and Minnesota Power (The Utilities).

ADDRESSES: To obtain copies of the ROD, or for further information, contact: Ms. Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Room 2244–S, Washington, DC 20250–1571, *telephone:* (970) 403–3559, *fax:* (202) 690–0649, or *e-mail: Stephanie.strength@wdc.usda.gov.* A copy of the ROD can be viewed online at: *http://www.usda.gov/rus/water/ees/eis.htm.*

SUPPLEMENTARY INFORMATION:

Minnkota's proposed Project is to construct a 230 kilovolt (kV) transmission line between the Wilton Substation near Bemidji, Minnesota and the Boswell Substation near Grand Rapids, Minnesota, which will cross portions of Beltrami, Hubbard, Itasca, and Cass counties. The Project involves modifying the Wilton and Boswell substations, constructing a new 115 kV breaker station at Nary Junction, Minnesota, and depending on the route alternative selected, upgrading the existing or constructing a new substation in the Cass Lake, Minnesota area. The purpose of the Project is for the Applicants to meet projected future electric demand and to maintain electric transmission reliability standards in accordance with the requirements of the North American Electric Reliability Corporation (NERC). The Project as proposed provides increased voltage support not only to the Bemidji to Grand Rapids area, including the Leech Lake Reservation, but is also required to improve the regional transmission reliability throughout the Red River Valley and north central Minnesota. Refer to Final EIS, pp. 2–3, and the Alternative Evaluation Study, Section 1.2, for additional detail.

In accordance with NEPA, the CEQ regulations for implementing the procedural provisions of NEPA, and applicable agency NEPA implementing regulations, RUS, CNF, USACE, and LLBO DRM cooperated in the development of a Final EIS to assess the potential environmental impacts associated with the proposed Project. The decision being documented in RUS's ROD is that the Agency agrees to consider, subject to loan approval, funding the proposed Project (Route Alternative 4). Because of the distinct federal actions being proposed, RUS, USACE and CNF decided to issue separate RODs. LLBO DRM's decision will be through a Tribal Resolution.

On July 18, 2008, RUS published in the **Federal Register** at 73 FR 41312 a Notice of Intent to prepare an EIS for the proposed Project. On March 3, 2010, RUS published its Notice of Availability (NOA) of the Draft EIS for the proposed Project in the **Federal Register** at 75 FR 9573. The U.S. Environmental Protection Agency acknowledged receipt of the Draft EIS on March 5, 2010, from RUS. The 45-day comment period ended on April 19, 2010. All comments on the Draft EIS have been entered into the administrative record, responses are included in the Final EIS, and the Final EIS was modified as appropriate. RUS published its NOA of the Final EIS for the proposed Project in the **Federal Register** on September 15, 2010 at 75 FR 56051. The U.S. Environmental Protection Agency acknowledged receipt of the Final EIS on September 17, 2010, from RUS. The 30-day waiting period ended on October 18, 2010. One comment was received and is addressed in RUS's ROD.

After considering various ways to meet these future needs, Minnkota identified construction of the proposed Project (Route Alternative 4) as its best course of action.

The Final EIS considered 11 alternatives to meet the Project need, including five alternative route locations. These alternatives were evaluated in terms of cost-effectiveness, technical feasibility, and environmental factors (*e.g.,* soils, topography and geology, water resources, air quality, biological resources, the acoustic environment, recreation, cultural and historic resources, visual resources, transportation, farmland, land use, human health and safety, the socioeconomic environment, environmental justice, and cumulative effects).

The Final EIS analyzes in detail the No Action Alternative and Route Alternatives 1, 2, 3, and 4. *See* ROD Section IV.b. "Alternatives Not Selected and RUS' Rational" for the rationale for eliminating the alternatives. The resources or environmental factors that could be affected by the proposed Project were evaluated in detail in the Final EIS. These issues are summarized in EIS Table ES–2: "Comparative Impacts of Route Alternatives."

Based on an evaluation of the information and impact analyses presented in the EIS, including the evaluation of all alternatives, and in consideration of the Agency's NEPA implementing regulations, Environmental Policies and Procedures, as amended (7 CFR Part 1794), RUS finds that the evaluation of reasonable alternatives is consistent with NEPA. The Agency has selected the Route Alternative 4 as its preferred alternative.

Because the proposed Project may involve action in floodplains or wetlands, this Notice also serves as a final notice of action in floodplains and wetlands (in accordance with Executive Orders 11988 and 11990). This Notice concludes RUS's compliance with NEPA and the Agency's "Environmental Policies and Procedures."

Dated: November 23, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–30298 Filed 12–1–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce 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: U.S. Census Bureau.

Title: Annual Capital Expenditures Survey.

Form Number(s): ACE–1(S), ACE–1(M), ACE–1(L), ACE–2.

OMB Control Number: 0607–0782.

Type of Request: Revision of a currently approved collection.

Burden Hours: 153,300.

Number of Respondents: 77,250.

Average Hours Per Response: 1.98 hours.

Needs and Uses: A major concern of economic policymakers is the adequacy of investment in plant and equipment. Data on the amount of business expenditures for new plant and equipment and measures of the stock of existing facilities are critical to evaluating productivity growth, the ability of U.S. business to compete with foreign business, changes in industrial capacity, and overall economic performance. The ACES survey is the sole source of detailed comprehensive statistics on investment in buildings and other structures, machinery, and equipment by private nonfarm businesses in the United States.

This request is for a continuation of a currently approved collection and will cover the 2010 through 2012 ACES (conducted in fiscal years 2011 through 2013). Changes from the previous ACES authorization are the elimination of detailed capital expenditures by type of structure and type of equipment. These data, collected every five years, were collected in the 2008 ACES and will not be collected again until the 2013 ACES.

The ACES is an integral part of the Federal Government's effort to improve the quality and usefulness of National economic statistics. Federal agencies, including the Census Bureau, use these data to improve and supplement ongoing statistical programs:

The Census Bureau uses the data to improve the quality of monthly economic indicators of investment. The Bureau's Value of New Construction Put in Place survey currently uses the ACES data to benchmark its industrial buildings data. The Bureau of Economic Analysis (BEA) uses the data in refining and evaluating annual estimates of investment in structures and equipment

in the national income and product accounts, compiling annual input-output tables, and computing gross domestic product by industry. The Federal Reserve Board uses the data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics uses the data to improve estimates of capital stocks for productivity analysis.

In addition, industry analysts use the data for market analysis, economic forecasting, product development, and business planning.

Affected Public: Business or other for-profit, Not-for-profit Institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: November 26, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–30271 Filed 12–1–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limits for the Preliminary Results of the New Shipper Review

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

DATES: *Effective Date:* December 2, 2010.

FOR FURTHER INFORMATION CONTACT: Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5403.

Background

The antidumping duty order on diamond sawblades from the People's Republic of China ("PRC") was published in the **Federal Register** on November 4, 2009. *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009) ("*Antidumping Duty Order*"). On April 30, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), the Department of Commerce ("Department") received a new shipper review request from Pujiang Talent Diamond Tools Co., Ltd. ("PTDT"). PTDT's request was properly made on April 30, 2010, as May is the semi-annual anniversary of the *Antidumping Duty Order.* On June 28, 2010, the Department issued a notice of initiation of a new shipper review of diamond sawblades and parts thereof from the PRC covering the period of January 24, 2009, through April 31, 2010. *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 75 FR 36632 (June 28, 2010). The preliminary results are currently due no later than December 14, 2010.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214(i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See also* 19 CFR 351.214(i)(2).

Extension of Time Limit of Preliminary Results

The Department determines that this new shipper review involves extraordinarily complicated methodological issues such as the examination of importer information and the evaluation of the *bona fide* nature of PTDT's sales. In addition, the Department needs additional time to evaluate the affiliations amongst PTDT and other entities. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these preliminary results by 120 days, until no later than April 13, 2011. The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: November 26, 2010.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–30291 Filed 12–1–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–841]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On August 16, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Brazil for the period November 6, 2008, through October 31, 2009. We gave interested parties an opportunity to comment on the preliminary results and received no comments. We have made no changes to Terphane, Inc.'s (Terphane's) margin for the final results of this review. The final weighted-average margin is listed below in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* December 2, 2010.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2010, the Department published the preliminary results of the administrative review of the antidumping duty order covering PET film from Brazil and invited interested parties to comment. *See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 49900 (August 16, 2010) (*Preliminary Results*). This administrative review covers one respondent, Terphane. The petitioners

in this proceeding are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.

In the *Preliminary Results,* the Department stated that interested parties may submit case briefs within 30 days of publication of the *Preliminary Results* and rebuttal briefs within five days after the due date for filing case briefs. *See Preliminary Results* at 49902. No interested parties submitted a case or rebuttal brief; therefore, there are no comments to address regarding the Department's determination in the *Preliminary Results.* We have not made any changes for the final results.

Period of Review

The period of review (POR) is November 6, 2008, through October 31, 2009.

Scope of the Order

The products covered by this order are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Final Results of Review

The Department has determined that the following antidumping duty margin exists for the period November 6, 2008, through October 31, 2009:

Producer/Exporter	Margin (percent)
Terphane, Inc.	44.36

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Because we are relying on total adverse facts available to establish the dumping margin for Terphane, we will instruct CBP to apply a dumping margin of 44.36 percent on all entries of PET film from Brazil that were produced and/or exported by Terphane and entered, or withdrawn from warehouse, for consumption during the POR. The Department intends to issue appropriate assessment instructions for Terphane to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of PET film from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for Terphane will be the rate established in the final results of this review; (2) for other previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 28.72 percent, the all-others rate established in the *Final Determination.* These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 24, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–30290 Filed 12–1–10; 8:45 am]

BILLING CODE 3510–DS–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9234–8]

Gulf of Mexico Executive Council Notice of Charter Renewal

AGENCY: Environmental Protection Agency.

ACTION: Notice of Charter Renewal.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined that in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the Gulf of Mexico Executive Council (GMEC) is a necessary committee which is in the public interest. Accordingly, GMEC will be renewed for an additional two year period. The purpose of the GMEC is to provide advice and recommendations to the Administrator of EPA on issues associated with plans to improve and protect the water quality and living resources of the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Gloria Car, Designated Federal Officer, Gulf of Mexico Program Office (Mail Code: EPA/GMPO), Stennis Space Center, MS, 39529, Telephone (228) 688–2421, or *car.gloria@epa.gov*.

Dated: November 24, 2010.

Peter S. Silva,

Assistant Administrator, Office of Water.

[FR Doc. 2010–30295 Filed 12–1–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the

notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 17, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. James Wang, individually, and James Wang and Ellen Ruth Kao Wang, Villanova, Pennsylvania; Tony Yi Ping Wang and Michelle Yichun Yang, Gladwyne, Pennsylvania; Elliot Hong Wai Wong, Philadelphia, Pennsylvania; Josephine Wang, Gladwyne, Pennsylvania; Aubrey Hui-Ju Wang, Havertown, Pennsylvania; and Janet Wang Calilung, Irvine, California; to acquire voting shares of Asian Financial Corporation, and thereby indirectly acquire voting shares of Asian Bank, both of Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Rick E. and Kathy A. Skates, both of Polson, Montana; to acquire shares of Flathead Lake Bancorporation, Inc., and thereby indirectly acquire shares of First Citizens Bank of Polson, National Association, both of Polson, Montana.

C. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. LG C–Co, LLC; Green Equity Investors V, L.P.; Leonard Green & Partners, L.P.; Green Equity Investors Side V, L.P.; GEI V Offshore Investors, L.P.; GEI V Special Investors, L.P.; Green V Holdings, LLC; GEI Capital V, LLC; and LGP Management, Inc., all of Los Angeles, California; John G. Danhakl, Pacific Palisades, California; Peter J. Nolan, Manhattan Beach, California; and Jonathan D. Sokoloff, Los Angeles, California; to acquire control of Cascade Bancorp, and thereby indirectly acquire control of Bank of the Cascades, both of Bend, Oregon.

2. WLR CB Acquisition Co LLC, WL Ross & Co. LLC, WLR Recovery Fund IV, L.P., WLR IV Parallel ESC, L.P. IV, Invesco North America Holdings, Inc., Invesco WLR IV Associates LLC, WLR Recovery Associates IV LLC, WL Ross Group L.P., El Vedado LLC, all of New York, New York; Wilbur L. Ross, Jr., Palm Beach, Florida; Invesco Ltd., Invesco Group Services, IVZ, Inc., Invesco Group Services, Inc., Invesco Advisers, Inc., Invesco Private Capital, Inc., all of Atlanta, Georgia; Invesco Holding Company Limited, London, United Kingdom; and Invesco AIM Management Group, Inc., Houston, Texas; to acquire control of Cascade Bancorp, and thereby indirectly acquire control of Bank of the Cascades, both of Bend, Oregon.

3. ACMO–CPF, L.L.C., New York, New York, and persons that are acting with or control ACMO–CPF, L.L.C. (Anchorage Capital Master Offshore, Ltd., ACPO Master, L.P., Anchorage Capital Partners Offshore, Ltd., ACPO Master, Ltd., all of Grand Cayman, Cayman Islands; Anchorage Capital Partners, L.P., Anchorage Capital Group, L.L.C. (f/k/a Anchorage Advisors, L.L.C.), Anchorage Capital, L.L.C. (f/k/a Anchorage Capital Group, L.L.C.), Anchorage Capital Management, L.L.C., Anchorage Advisors Management, L.L.C., all of Wilmington, Delaware; and Kevin Ulrich and Anthony Davis, both of New York, New York; to acquire control of Central Pacific Financial Corp., and thereby indirectly acquire control of Central Pacific Bank, both of Honolulu, Hawaii.

4. DBD Cayman, Limited, TCG Holdings Cayman II, L.P., TC Group Cayman Investment Holdings, L.P., Carlyle Financial Services, Ltd., TCG Financial Services, L.P., all of Grand Cayman, Cayman Islands; and Carlyle Financial Services Harbor, L.P., Wilmington, Delaware; to acquire control of Central Pacific Financial Corp., and thereby indirectly acquire control of Central Pacific Bank, both of Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, November 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–30283 Filed 12–1–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

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 December 17, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Texas Country Bancshares Inc., Brady, Texas; to engage *de novo* through its subsidiary bank, in lending activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–30284 Filed 12–1–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB review; comment request

Title: State Abstinence Education Program.

OMB No.: 0970–0381.

Description: The State Abstinence Program was extended through Fiscal Year 2014 under Patient Protection and Affordable Care Act of 2010 (Affordable Care Act, hereafter), Public Law 111–148.

The Family and Youth Services Bureau (FYSB) is accepting applications from States and Territories for the development and implementation of the State Abstinence Program. The purpose of this program is to support decisions to abstain from sexual activity by providing abstinence programming as

defined by Section 510(b) of the Social Security Act (42 U.S.C. 710(b)) with a focus on those groups that are most likely to bear children out-of-wedlock, such as youth in or aging out of foster care.

States are encouraged to develop flexible, medically accurate and effective abstinence-based plans responsive to their specific needs. These plans must provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock. An expected outcome for all programs is to promote abstinence from sexual activity.

OMB approval is requested to solicit comments from the public on paperwork reduction as it relates to ACYF's receipt of the following documents from applicants and awardees:

Application for Mandatory Formula Grant

State Plan

Performance Progress Report

Respondents: 50 States and 9 Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands and Palau.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application, to include program narrative	59	1	24	1,416
Post-Award State Plan	59	1	40	2,360
Performance Progress Reports	59	2	30	3,540

Estimated Total Annual Burden Hours: 7,316

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–30272 Filed 12–1–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0182]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 18, 2010 (75 FR 34746), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0354. The approval expires on November 30, 2013. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: November 26, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30277 Filed 12–1–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0603]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Drug User Fees and Fee Waivers and Reductions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for the

animal drug user fees and fee waivers and reductions.

DATES: Submit either electronic or written comments on the collection of information by January 31, 2011.

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: Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.Vilela@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.

Animal Drug User Fees and Fee Waivers and Reductions—(OMB Control Number 0910–0540—Extension)

Enacted on November 18, 2003, the Animal Drug User Fee Act (ADUFA) (Pub. L. 108–130) amended the Federal Food, Drug, and Cosmetic Act and requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the Agency to grant a waiver from, or a reduction of those fees in certain circumstances. Thus, to implement this statutory provision of ADUFA, FDA developed a guidance entitled "Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions." It provides guidance on the types of fees FDA is authorized to collect under ADUFA, and on how to request waivers and reductions from FDA's animal drug user fees. The guidance also describes the types of fees and fee waivers and reductions, the information FDA recommends respondents submit in support of a request for a fee waiver or reduction, how respondents may submit such a request, and FDA's process for reviewing requests.

Respondents to this collection of information are new animal drug sponsors. Requests for waivers or reductions may be submitted by a person paying any of the animal drug user fees assessed—application fees, product fees, establishment fees, or sponsor fees.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
740(d)(1)(A) Significant barrier to innovation	22	1	22	2	44
740(d)(1)(B) Fees exceed cost	0	1	0	2	0
740(d)(1)(C) Free choice feeds	2	1	2	2	4
740(d)(1)(D) Minor use or minor species	52	1	52	2	104
740(d)(1)(E) Small business	0	1	0	0	0
Request for reconsideration of a decision	5	1	5	2	10
Request for review—(user fee appeal officer)	2	1	2	2	4
Total					166

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's database system, there are an estimated 250 sponsors of products subject to ADUFA. However, not all sponsors will have any submissions in a given year and some may have multiple submissions. The total number of waiver requests is based on the number of submission types received by FDA in fiscal year 2008.

Dated: November 24, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30264 Filed 12–1–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Gastrointestinal Drugs Advisory Committee; 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: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 12, 2011, from 8 a.m to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, Bldg. 31, the Great Room, White Oak Conference Center (rm. 1503). 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 "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings." Please note that visitors to the White Oak Campus must have a valid driver's license or other picture ID, and must enter through Building 1.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *FAX:* 301–847–8533, *e-mail: kristine.khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512538. Please call the Information Line for up-to-date information on this meeting. 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 and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On January 12, 2011, the committee will discuss the safety and efficacy of new drug application (NDA) 022–486, for Solpura (liprotamase) Capsules, by Alnara Pharmaceuticals, for the proposed indication (use) in the treatment of exocrine pancreatic insufficiency due to cystic fibrosis, chronic pancreatitis, pancreatectomy (surgical removal of all or part of the pancreas), or other conditions that may impair or limit function of the pancreas. The pancreas is an organ involved, in part, in the digestion of food through the use of specialized proteins called enzymes. Exocrine pancreatic insufficiency is a decreased ability to digest food due to deficient enzyme production by the pancreas.

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 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 December 28, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 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 December 17, 2010. 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 December 20, 2010.

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 Kristine T. Khuc 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: November 26, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30274 Filed 12–1–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Compositions and Methods To Treat Glioblastoma and Other Cancers

Description of Technology: There remains a significant unmet need for therapeutics to treating glioblastoma multiforme, a very aggressive type of brain tumor. Glioblastoma is difficult to treat with conventional surgery, chemical, and radiation therapies. With approximately 18,000 new glioblastoma cases in the U.S. each year, and a comparable market in Europe, the global market for such products forecast to be over $300 million. In light of the high unmet need in malignant astrocytoma and little in the way of pipeline competition, this indication represents a potential easy route to market for new drugs.

Researchers at the National Cancer Institute (NCI) have identified two novel molecular targets, annexin 1 (Anx A1) and its receptor formyl peptide receptor 1 (FPR1), for new anti-glioblastoma therapies. Anx A1 and FPR1 mediate growth, invasion, production of angiogenic factors, tumor formation, and are abnormally expressed by more highly malignant glioblastomas. Depletion of Anx A1 in glioblastoma cells resulted in their reduced capacity to form tumors; additional depletion of FPR1 further reduced this capacity. Further, the NCI researchers have found a correlation between Anx A1 expression and the degree of malignancy of human gliomas.

Novel anti-glioblastoma therapies encompassed by this invention include neutralizing antibodies against Anx A1 and FPR1, small compound agonists of Anx A1 and FPR1, small interference RNAs (siRNAs) that deplete Anx A1 and FPR1 from glioblastoma cells, as well as delivery methods to effectively administer the Anx A1 and FPR1 targeting drugs into brain tissues.

Applications

- Treatment of glioblastoma multiforme and other brain tumors.
- Treatments for inhibiting neoplastic cell growth.
- Treatments for inhibiting tumor progression and metastasis.
- Treatments for inhibiting angiogenesis in a tumor.

Advantages

- High specificity.
- Does not require radiation.
- A correlation between expression of the molecular target and the degree of tumor malignancy is known.
- Wide-range/flexibility of potential therapies and approaches.

Development Status: Pre-clinical.

Inventors: Ji Ming Wang *et al.* (NCI).

Relevant Publication: Y Zhou, *et al.* Formylpeptide receptor FPR and the rapid growth of malignant human gliomas. J Natl Cancer Inst. 2005 Jun 1;97(11):823–835. [PubMed: 15928303]

Patent Status: U.S. Provisional Application No. 61/388,983, filed 01 Oct 2010 (HHS Reference No. E–297–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Patrick P. McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Laboratory of Molecular Immunoregulation, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Synovial Sarcoma X Breakpoint-2 (SSX–2) Specific Human T Cell Receptors for Treating a Wide-Range of Cancers

Description of Technology: Many current approaches for treating cancer also generate harsh side effects in patients. In addition, a sizable patient population does not respond to generalized chemotherapy and radiation treatments for cancer. There is an urgent need to develop new therapeutic strategies aimed at reducing side-effects and increasing specific anti-tumor activity in individual patients. Adoptive immunotherapy is a promising new approach to cancer treatment that engineers an individual's innate and adaptive immune system to fight against specific diseases, including cancer. As research and development continues in this area, scientists continue to improve cell transfer therapies by targeting an increasing collection of tumor antigens with more effective immune cell cultures.

T cell receptors (TCRs) are proteins that recognize antigens in the context of infected or transformed cells and activate T cells to mediate an immune response and destroy abnormal cells. TCRs consist of two domains, one variable domain that recognizes the antigen and one constant region that helps the TCR anchor to the membrane and transmit recognition signals by interacting with other proteins. When a TCR is stimulated by an antigen, such as a tumor antigen, some signaling pathways activated in the cell lead to the production of cytokines, which mediate the immune response.

Scientists at the National Institutes of Health (NIH) have developed T cells genetically engineered to recognize synovial sarcoma X breakpoint-2 (SSX–2) peptide antigens. SSX proteins, including SSX–2, are expressed primarily by tumor cells from a variety of cancers, including pancreatic cancer where very few treatment options exist. Other than germ cells of the testis, normal cells do not express SSX proteins and, thus, should not be targeted by therapies directed against these proteins. Therefore, SSX proteins represent a promising target for cancer immunotherapy. There are ten (10) known members of the SSX protein family designated SSX–1 through SSX–10. The T cell receptors (TCRs) developed by these NIH scientists have specificity for SSX–2 and deliver a robust immune response when they encounter SSX–2 expressing cells. However, these TCRs also recognize five (5) other SSX family members, including SSX–3, SSX–4, SSX–5, SSX–9, and/or SSX–10, and deliver a productive, intermediate immune response in the context of target cells expressing these antigens. This versatile antigen coverage could allow these SSX-specific TCRs to be utilized in the treatment of multiple types of cancer in a wide array of cancer patients. Infusing cancer patients with SSX–2 specific T cells via adoptive immunotherapy could prove to be a powerful approach for selectively attacking tumors without generating toxicity against noncancerous cells.

Applications

- Immunotherapeutics to treat and/or prevent the recurrence of a variety of human cancers, including pancreatic cancer and melanoma, by adoptively transferring the gene-modified T cells into patients whose tumors express a SSX family member protein recognized by this TCR.
- A drug component of a combination immunotherapy regimen aimed at targeting specific tumor-associated antigens, including SSX–2, SSX–3, SSX–4, SSX–5, SSX–9, and/or SSX–10 expressed by cancer cells within individual patients.
- A research tool to investigate signaling pathways in SSX–2 expressing cancer cells.
- An *in vitro* diagnostic tool to screen for cells expressing an SSX antigen from a recognized member of the SSX protein family.

Advantages

- *Selective toxicity for tumor cells*—SSX–2 and other SSX proteins are only expressed on testis germ cells and tumor cells. Thus, infused cells expressing an anti-SSX–2 TCR should target SSX-expressing tumor cells with little or no toxicity to normal cells. Immunotherapy with these cells is not anticipated to elicit harsh side effects to patients.
- *Ability to recognize multiple SSX antigens*—Since these SSX–2 directed TCRs can also recognize five (5) additional SSX family members (SSX–3, 4, 5, 9, and 10), cells expressing these TCRs are expected to be able to fight a larger range of tumor types. If in the course of attacking SSX–2 expressing tumor cells in a patient these cells also encounter tumor cells expressing other recognized SSX antigens, then these cells would still be capable of eliminating the non-SSX–2 expressing cell. The ability of these TCRs to recognize multiple SSX antigens may

allow it to be utilized to treat a broader population of patients.

• *Versatile antigen recognition*—These TCRs are CD8 and CD4 independent meaning that cells expressing these TCRs are capable of eliciting an immune response in the absence of CD8 or CD4 molecule expression on the T cell. When utilized for immunotherapy, this versatility allows engineered T cells expressing this TCR to recognize and eliminate tumors expressing SSX–2 regardless of how the antigen is presented to the T cell.

Development Status: This technology is in a preclinical stage of development.

Inventors: Richard A. Morgan *et al.* (NCI).

Publications

1. N Chinnasamy, *et al.* Development of HLA–A2 Restricted TCR Against Cancer Testis Antigen SSX–2 for Adoptive Immunotherapy of Cancer. Abstracts for the 25th Annual Meeting of the International Society for Biological Therapy of Cancer, J Immunother. 2010 Oct;33(8):860, DOI 10.1097/CJI.0b013e3181f1e08d.

2. D Valmori, *et al.* Expression of synovial sarcoma X (SSX) antigens in epithelial ovarian cancer and identification of SSX–4 epitopes recognized by CD4+ T cells. Clin Cancer Res. 2006 Jan 15;12(2):398–404. [PubMed: 16428478]

3. G Bricard, *et al.* Naturally acquired MAGE–A10- and SSX–2-specific CD8+ T cell responses in patients with hepatocellular carcinoma. J Immunol. 2005 Feb 1;174(3):1709–1716. [PubMed: 15661935]

Patent Status: U.S. Provisional Application No. 61/384,931 filed 21 Sept 2010 (HHS Reference No. E–269–2010/0–US–01).

Related Technologies: T cell receptor technologies developed against other CTAs: E–304–2006/0 and E–312–2007/1 (anti-NY–ESO–1) and E–236–2010/0 (anti-MAGE–A3).

Licensing Status: Available for licensing.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; bishse@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute, Surgery Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of T cell receptor gene therapy for the treatment of cancer. Please contact John Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: November 24, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–30279 Filed 12–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mouse Monoclonal Antibody for CEACAM

Abstract: The following biological material is a hybridoma cell line generated from mice lymphocytes immunized with human mammary carcinomas and fused to a myeloma cell line. The resulting mouse monoclonal antibody (MAb, clone B1.1) is directed against carcinoembryonic antigen (CEA). CEA are glyco-proteins whose expression levels are increased on the surface of metastatic cancer cells. Therefore, antibodies generated from the hybridoma clone B1.1 can be used to detect cancer cells. MAb B1.1 binds to the surface of human breast and melanoma cell lines and cells associated with colon carcinomas and adenomas. The antibody has been tested to work effectively in several techniques such as Immunofluorescence, Western Blot, Fluorescent Activated Cell Sorting (FACS), and Immunohistochemistry (IHC).

Commercial Applications

• Developing cancer biomarker.

• Developing cell sorting assays (*e.g.* FACS).

• Immunofluorescence, Western Blotting, and Immunohistochemistry for CEA.

• Developing prognostic assays for cancer.

Competitive Advantages: Tested to bind CEA and can be used in different Immunological Techniques such as Immunofluorescence, Western Blot, Fluorescent Activated Cell Sorting (FACS), and Immunohistochemistry (IHC).

Materials Available: 1 vial of Hybridoma cell line (B1.1).

Inventors: Jeffrey Schlom and David Colcher (NCI).

Related Publications

1. D. Colcher *et al.* (1983) [PubMed: 6365268].

2. D. Stramignoni *et al.* (1983) [PubMed: 6852972].

Patent Status: "The Generation of Monoclonal Antibody (MAb) B1.1 and Its Reactivity to Human Tumors," HHS Reference No. E–272–2010/0—Research Material. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Sabarni Chatterjee, Ph.D.; 301–435–5587; *chatterjeesa@mail.nih.gov.*

Novel Compounds That Specifically Kill Multi-Drug Resistant Cancer Cells

Description of Technology: One of the major hindrances to successful cancer chemotherapy is the development of multi-drug resistance (MDR) in cancer cells. MDR is frequently caused by the increased expression or activity of ABC transporter proteins in response to the toxic agents used in chemotherapy. The increased expression or activity of the ABC transporter proteins causes the toxic agents to be removed from cells before they can act to kill the cell. As a result, research has generally been directed to overcoming MDR by inhibiting the activity of ABC transporters, thus causing the chemotherapeutic agents to remain in the cell long enough to exert their effects. However, compounds that inhibit ABC transporter activity often elicit strong and undesirable side-effects due to the inhibition of ABC transporter function in normal cells, thereby restricting their usefulness as therapeutics.

Investigators at the NIH previously identified novel compounds with the ability to kill multi-drug resistant cancer cells while leaving normal cells relatively unharmed. These "MDR-selective compounds" were not inhibitors of ABC transporters because they killed multi-drug resistant cells without affecting the activity of ABC transporters. Furthermore, their activity was dependent directly on the level of expression of ABC transporters, thus increasing their selectivity for diseased cells. As a result, the undesirable side-effects that have prevented the use of inhibitors of ABC transporters as therapeutics should not affect the therapeutic application of the MDR-selective compounds.

The inventors have now generated third generation MDR-selective compounds with further improved solubility, selectivity and killing activity toward MDR cells. The new MDR-selective compounds selectively kill MDR cancer cells, and their efficacy correlates directly with the level of ABC transporter expression. This suggests that the third generation MDR-selective compounds represent a powerful strategy for treating MDR cancers.

Applications:

• Treatment of cancers associated with MDR, either alone or in combination with other therapeutics.

• Development of a pharmacophore for improved MDR-selective compounds.

Advantages:

• MDR-selective compounds capitalize on one of the most common drawbacks to cancer therapies (MDR) by using it as an advantage for treating cancer.

• The compositions do not inhibit the activity of ABC transporters, thereby reducing the chance of undesired side-effects during treatment.

• The effects of MDR-selective compounds correlate with the level of ABC transporter expression, allowing healthy cells to better survive treatments.

• Increased specificity and solubility of the new MDR-inverse compounds allows greater access to MDR cells, thereby increasing therapeutic effectiveness.

Development Status: Preclinical stage of development, *in vitro* data.

Inventors: Hall (NCI) *et al.*

U.S. Patent Status: U.S. Provisional Application 61/375,672 (E–249–2010/0–US–01).

For more information, see:

• Hall, MD *et al.* (2009) "Synthesis, activity, and pharmacophore development for isatin-beta-thiosemicarbazones with selective activity toward multidrug-resistant cells" J Med Chem. 52(10):3191–204.

• PCT Publication WO 2009/102433 (PCT Patent Application PCT/US2009/000861).

Licensing Status: Available for licensing.

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Laboratory of Cell Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Isocitrate Dehydrogenase 1 (IDH1) R132 Mutation Human Melanoma Metastasis Cell Line

Description of Technology: Isocitrate dehydrogenase 1 (IDH1) plays an important role in glucose metabolism in the cytoplasm, converting isocitrate to α-ketoglutarate while reducing nicotinamide adenine dinucleotide phosphate (NADP+ to NADPH). However, when IDH1 harbors a R132 mutation it results in the accumulation of 2-hydroxyglutarate and has a corresponding association with cancer. This mutation in IDH1 has previously been identified in approximately 80% of progressive gliomas and 10% acute myeloid leukemias (AML). In contrast, this mutation is very rare in other cancers. Therefore, additional research on the IDH1 R132 mutation could be useful for diagnostic, prognostic, and therapeutic purposes.

The researchers at the NIH have developed a human melanoma cell line designated 2633, which harbors the IDH1 R132C mutation. The inventors used low passage cell lines derived from a panel of confirmed metastatic melanoma tumor resections, paired with apheresis-collected peripheral blood mononuclear cells to identify IDH1 mutations. Sequencing of IDH1 in this panel allowed them to discover a melanoma cell line with the IDH1 R132C mutation. Until now no such cell line has been found and this has hindered the understanding of the effects mutated IDH1 has on cancer progression as well as the development of drugs that would be specific for cells that harbor this mutation. Use of this cell line will allow researchers to decipher the biology of this gene as well as aid in the development of specific inhibitors of its mutated form.

Applications:

• *In vitro* and *in vivo* cell model for the IDH1 R132C mutation in melanoma. This would be an extremely useful research tool for investigating the underlying biology of IDH1 phenotypes, including effects on growth, motility, invasion, and metabolite production.

• Research tool for testing the activity of inhibitors to IDH1, where such inhibitors could be used as a therapeutic drug to treat particular cancers including potentially glioma, AML and melanoma.

• Research tool to generate cell lines where the R132C mutation is knocked out or the wild type gene is knocked in using an adeno-associated virus. These resulting cells can be used to understand the underlying biology of IDH1 phenotypes or to identify candidate small molecule and other therapeutic drugs.

Advantages:

• *Cell line is derived from a melanoma patient:* This cell line likely retains many features of primary melanoma samples. For example novel melanoma antigens identified from this cell would be expected to correlate with antigens expressed on human melanoma tumors. Studies performed using this cell line could be used to elucidate to the biological basis of the initiation and progression of melanoma in humans as well as aid in the identification and/or testing of IDH1 R132-targeted inhibitors.

• *Expresses the R132 IDH1 mutation in melanoma:* IDH1 R132 mutations frequently occur in advanced gliomas, however this is the first identification of an IDH1 mutation in melanoma. Therefore, the 2633 cell line represents a tool that can be utilized to study the impact of this IDH1 gene and the R132C mutation on melanoma and other cancers.

Inventors: Yardena Samuels (NHGRI) and Steven Rosenberg (NCI).

Publication: Lopez GY, Reitman ZJ, Solomon D, Waldman T, Bigner DD, McLendon RE, Rosenberg SA, Samuels Y, Yan H. IDH1(R132) mutation identified in one human melanoma metastasis, but not correlated with metastases to the brain. Biochem Biophys Res Commun. 2010 Jul 30;398(3):585–587. [PubMed: 20603105]

Patent Status: HHS Reference No. E–232–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

Collaborative Research Opportunity: The National Human Genome Research Institute's Cancer Genetics Branch is seeking statements of capability or

interest from parties interested in collaborative research to further develop, evaluate and/or commercialize this newly identified melanoma-associated gene as a diagnostic marker as well as utilize the IDH1 R132 cell line to identify and test IDH1 inhibitors as possible therapeutic drug candidates to treat melanoma and other cancers. Please contact Dr. Yardena Samuels at *samuelsy@mail.nih.gov* for more information.

ERBB4 Mutations Mutation Identified in Human Melanoma Metastasis Cell Lines (2690, 2379, 2197, 2183, 2535, 2645, 1770, 2359, 2238, 2319, 2190)

Description of Technology: Protein tyrosine kinases (PTKs) have been associated with a wide variety of cancers, including melanoma. Using high-throughput gene sequencing, the NIH has analyzed PTKs in melanoma and identified several novel somatic alterations, including alterations in ERBB4 (also called HER4). These mutations were found to increase the sensitivity of cells in which they reside to small molecule inhibitors, such as lapatinib.

Available for licensing are several melanoma cell lines that harbor ERBB4 mutations. These cell lines provide methods of identifying specific inhibitors to ERBB4 that could be used to treat patients with ERBB4 mutations as well as methods to further understand the role of ERBB4 mutations in melanoma. Given the recent success of small molecule protein kinase inhibitors and specifically inhibitors to epidermal growth factor receptor (EGFR) (such as gefinitib and erlotinib), these reagents could be used to further the development of specific inhibitors to ERBB4 and improve existing melanoma treatments for patients with these mutations.

Applications:

- *In vitro* and *in vivo* cell model for understanding the biology of ERBB4, including growth, motility, invasion, and metabolite production.
- High throughput drug screening to test for ERBB4 inhibitors that could be used to treat particular cancers, such as melanoma.
- Diagnostic array for the detection of ERBB4 mutations.
- Research tool to generate cell lines where the ERBB4 mutation is knocked out or the wild type gene is knocked in using an adeno-associated virus. These resulting cells can be used to understand the underlying biology of ERBB4 phenotypes or to identify candidate small molecule and other therapeutic drugs.

Advantages:

- *Cell lines are derived from melanoma patients:* These cell lines are likely to retain many features of primary melanoma samples. For example novel melanoma antigens identified from this cell line would be expected to correlate with antigens expressed on human melanoma tumors. Studies performed using these cell lines could be used to elucidate the biological basis of initiation and progression of melanoma in humans as well as aid in the identification and/or testing of ERBB4 inhibitors.
- *Expresses the ERBB4 mutation in melanoma:* ERBB4 is a highly mutated gene in melanoma, suggesting its important functional role in the disease. Therefore, these cell lines represent a tool that can be utilized to study the impact of the ERBB4 gene and the associated mutations on melanoma, and possible other cancers since mutations in ERBB family members such as EGRF and ERBB2 are prevalent in lung cancer, glioblastoma and gastric cancer.

Inventors: Yardena Samuels (NHGRI), Steven Rosenberg (NCI), and Todd Prickett (NHGRI).

Publication: Prickett TD, Agrawal NS, Wei X, Yates KE, Lin JC, Wunderlich JR, Cronin JC, Cruz P, Rosenberg SA, Samuels Y. Analysis of the tyrosine kinome in melanoma reveals recurrent mutations in ERBB4. Nature Genet. 2009 October; 41(10):1127–1132. [PubMed: 19718025]

Patent Status: HHS Reference No. E–229–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

Collaborative Research Opportunity: The National Human Genome Research Institute's Cancer Genetics Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate and/or commercialize these newly characterized ERBB4 mutant cell lines as well as to identify and test ERBB4 inhibitors as possible therapeutic drug candidates to treat melanoma and other cancers. Please contact Dr. Yardena Samuels at *samuelsy@mail.nih.gov* for more information.

Synthetic Analogs of RGD and NGR Cyclic Peptides

Description of Technology: Cell surface biomolecules such as integrins ($\alpha_v\beta3$, $\alpha_v\beta5$, $\alpha_v\beta8$, $\alpha_6\beta4$), folate receptors, and CD13 are highly expressed in cancer cells and are involved in angiogenesis, invasion and metastasis. Consequently, this has made these cellular biomolecules attractive targets for delivery of drugs that can bind to them selectively. The peptide motifs RGD (Arg-Gly-Asp) and NGR (Asn-Gly-Arg), in particular, are recognized by integrins $\alpha_v\beta_3$ and $\alpha_v\beta_5$ and CD13 with high affinity. Further, short peptide sequences of RGD and NGR are commercially useful because they are amenable to large scale synthesis, chemical modification and are non-immunogenic. Therefore, there is a need for cyclic compounds having the NGR peptide motif to target CD13 or having the RGD peptide motif to target $\alpha_v\beta_3$ and $\alpha_v\beta_5$ integrins.

Accordingly, the researchers at the NIH have developed cyclic NGR and RGD pentapeptide analogs efficiently synthesized on resin via click chemistry. These cyclic peptides are potentially useful in targeted delivery of drugs, antibodies, or nanoparticles to the site of angiogenic blood vessels and tumors. By allowing for targeted drug delivery, these peptides can minimize general cytotoxicity and improve bioavailability. The cyclic peptides described are novel, synthetic analogs of RGD and NGR cyclic peptides. Therefore, their inherent cyclic structure and the cyclization strategy will make these compounds stable from hydrolytic degradation, thereby prolonging their half life in circulation.

Applications: Targeted drug delivery and medical imaging of cancer tissues expressing CD13 or $\alpha_v\beta_3$ and $\alpha_v\beta_5$ integrins.

Advantages:

- These cyclic peptides contain a triazole unit that would be less likely to be attacked by hydrolytic enzymes and esterases, thus making them ideal candidates for *in vivo* targeted delivery and imaging.
- The RGD and NGR cyclic peptides are amenable to large scale synthesis, chemical modification and are non-immunogenic, while the linear RGD peptide counterparts are prone to protease degradation making them much less stable and limiting their use in *in vivo* applications.
- Both linear and disulfide-bridged cyclic peptides containing the NGR motif have been used to deliver various anti-tumor compounds and viral particles to tumor vessels, with the cyclic versions showing more than a 10 fold higher binding affinity than their linear counterparts.

Development Status: Pre-clinical proof of principle.

Inventors: Belhu B. Metaferia and Javed Khan (NCI).

Publications: B Metaferia *et al.* Synthesis of novel cyclic NGR/RGD

peptide analogs via on resin click chemistry. In preparation.

Patent Status: U.S. Provisional Application No. 61/347,038 filed 21 May 2010 (HHS Reference No. E–130–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

Novel Therapeutic Compounds for Treatment of Cancer and Immune Disorders

Description of Invention: The global market for cancer therapeutics is over $40 billion and is anticipated to continue to rise in the future. There remains a significant unmet need for therapeutics for cancers that affect blood, bone marrow, and lymph nodes and the immune system, such as leukemia, multiple myeloma, and lymphoma. The proteasome inhibitor bortezomib, which may prevent degradation of pro-apoptotic factors permitting activation of programmed cell death in neoplastic cells dependent upon suppression of pro-apoptotic pathways, has been a successful mode of treatment for such cancers. However, some patient's cancers have been found to be resistant to the drug.

Researchers at the National Institutes of Health have developed novel hydrazone and diacyl hydrazine compounds that are inhibitors of the endoplasmic reticulum-associated protein degradation (ERAD) pathway. These compounds preferentially target the proteasome assistant ATPase p97/VCP at a site independent of nucleotide binding. The researchers have shown that these ERAD inhibitors can induce cancer cell death and can also synergize with bortezomib in cytotoxic activity. In addition to treating diseases or disorders in which inhibition of the ERAD pathway is an effective therapy, these novel compounds may also be useful in the study of protein degradation.

Advantages:

- Development of therapies against tumors that are resistant to bortezomib.
- Use in therapies in combination with proteasome inhibitors.
- Development of immunosuppressive therapies that target the ubiquitin proteasome system.
- Studies of the mechanism of protein degradation and other biological processes that involve the p97 ATPase.
- Bioprobes to detect endoplasmic reticulum (ER) structures in live cells.

Advantages:

- Potent anti-tumor activity.
- Simpler chemical structure makes synthesis easier and more cost-effective than previous ERAD inhibitors.
- Retain activity against bortezomib-resistant cells and can synergize with bortezomib.
- Fluorescent.
- High affinity for the ER.

Development Status: Pre-clinical.

Inventors: Adrian Wiestner (NHLBI), William Trenkle (NIDDK), Yihong Ye (NIDDK) *et al.*

Relevant Publications:

1. Qiuyan Wang *et al.* ERAD inhibitors integrate ER stress with an epigenetic mechanism to activate BH3-only protein NOXA in cancer cells. Proc Natl Acad Sci USA 2009 Feb 17;106(7):2200–2205. [PubMed: 19164757]
2. Qiuyan Wang *et al.* The ERAD inhibitor Eeyarestatin I is a bifunctional compound with a membrane-binding domain and a p97/VCP inhibitory group. PloS ONE 2010, in press.

Patent Status: U.S. Provisional Application No. 61/266,760 filed 04 Dec 2009 (HHS Reference No. E–291–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Surekha Vathyam, Ph.D.; 301–435–4076; *vathyams@mail.nih.gov.*

Targeted Anti-Cancer Compounds for Treating Chromosomal Instability Syndromes

Description of Invention: At $47 billion, cancer is one of the largest, fastest growing markets in the pharmaceutical industry. There remains a significant unmet need for new therapeutics that target cancer cells while sparing normal cells. Cancer cells show higher levels of DNA damage than normal cells, and therefore rely more heavily than normal cells on DNA repair mechanisms for survival. There is a particular need for cancer therapies for cancer-prone chromosomal instability syndromes such as Ataxia Telangiectasia, Nijmegen Breakage, Bloom, and Fanconi's anemia, which result from dysfunctional DNA repair systems.

Researchers at Columbia University and the National Cancer Institute (NCI) have developed compositions and methods of useful in the treatment of cancer and in the sensitization of cancer cells to cancer therapy. The compositions target the MRE11–RAD50–NBS1 (MRN) complex, a DNA repair complex essential for sensing and responding to DNA damage.

Given the dependency of cancer cells on DNA repair systems, they are susceptible to compositions that inhibit DNA damage repair. Thus, cancers that already have one or more defects in DNA repair systems, such as those from patients with chromosomal instability syndromes, are effectively treated with the present compositions.

Applications: Development of treatments for cancer.

Development Status: Pre-clinical.

Inventors: Levy Kopelovich (NCI) *et al.*

Relevant Publication: A Dupré *et al.* A forward chemical genetic screen reveals an inhibitor of the Mre11–Rad50–Nbs1 complex. Nat Chem Biol. 2008;4(2):119–125. [PubMed: 18176557]

Patent Status:

- U.S. Provisional Application No. 61/203,377 filed 22 Dec 2008 (HHS Reference No. E–154–2009/0–US–01).
- International Application No. PCT/US09/69171 filed 22 Dec 2009, which published as WO 2010/075372 on 01 Jul 2010 (HHS Reference No. E–154–2009/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Patrick P. McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Division of Cancer Prevention, Chemopreventive Agent Development Research Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize agents for the prevention and treatment of cancer. Please contact John Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: November 24, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–30278 Filed 12–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–914, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Form I–914 and Supplements A and B, Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of

Trafficking in Persons; OMB Control No. 1615–0099.

The Department of Homeland Security, 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 was previously published in the **Federal Register** on September 8, 2010, at 75 FR 54646, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 3, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0099 in the subject box. 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 agencies 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 of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Supplement A: Application for Immediate Family Member of T–1 Recipient; and Supplement B: Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–914; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form I–914 permits victims of severe forms of trafficking and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914, 500 responses at 2.25 hours per response; Supplement A, 500 responses at 1 hour per response; Supplement B, 200 responses at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,725 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: November 24, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–30150 Filed 12–1–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[IDI–36712]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service (FS) has filed an application with the Bureau of Land Management (BLM) requesting the Assistant Secretary of the Interior for Land and Minerals Management to withdraw 10 acres of public land adjacent to the Clearwater National Forest from mining to protect the Lenore Tree Improvement Area near Orofino, Idaho and adjacent to the Clearwater River. This notice segregates the land for up to 2 years from settlement, sale, location or entry under the United States mining laws. The land will remain open to mineral leasing and to all activities currently consistent with applicable Forest plans and those related to the exercise of valid existing rights. This parcel of land has been withdrawn for FS use since 1990 for genetic seedling testing purposes. This proposed withdrawal covers the same 10 acres that were withdrawn for FS use under Public Land Order (PLO) No. 6799, BLM Serial Number IDI–26701, published on Friday, September 14, 1990 in the **Federal Register** (55 FR 37878). Due to an administrative oversight on the part of the FS, PLO 6799 expired before an extension of the withdrawal can be processed. Therefore, the FS is requesting a new 20-year withdrawal covering the same area.

DATES: Comments and request for a public meeting must be received by March 2, 2011.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Clearwater National Forest, 12730 Highway 12, Orofino, Idaho 83544.

FOR FURTHER INFORMATION CONTACT: Laura Summers, BLM Idaho State Office, 208–373–3866 or Scott Bixler, Forest Service, (406) 329–3655.

SUPPLEMENTARY INFORMATION: The FS has filed an application to withdraw the following described public land from settlement, sale, location and entry under the United States mining laws, subject to valid existing rights:

Boise Meridian

Clearwater National Forest

T. 37 N., R. 1 W.,
Sec. 32, N½S½NW¼SW¼.

The area described contains 10.00 acres in Nez Perce County, Idaho.

For a period of 2 years from December 2, 2010, the land will be segregated from settlement, sale, location and entry under the United States mining laws unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include activities currently consistent with applicable plans and those related to the exercise of valid existing rights, including public recreation and other activities compatible with preservation of the character of the area.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor, Clearwater National Forest, at the address indicated above.

The use of a right-of-way, interagency agreement, cooperative agreement or surface management under 43 CFR 3809 would not adequately constrain non-discretionary uses that could irrevocably affect the use of the lands for mining purposes.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor at the address indicated above by March 2, 2011. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a newspaper having a general circulation in the vicinity of the land at least 30 days before the scheduled date of the meeting.

Records relating to the application may be examined by interested parties at the address of the Clearwater National Forest Office stated above.

Comments, including names and street addresses for respondents, will be available for public review at the Clearwater National Forest Office during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. 1714.

Jerry L. Taylor,

Chief, Branch of Lands, Minerals and Water Rights, Resource Services Division.

[FR Doc. 2010–30304 Filed 12–1–10; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–722]

In the Matter of Certain Automotive Vehicles and Designs Therefor Notice of Request for Written Submissions on Remedy, the Public Interest, and Bonding With Respect to Respondents Found in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission is requesting briefing on remedy, the public interest, and bonding with respect to two respondents previously found in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 17, 2010, based on a complaint filed by Chrysler Group LLC ("Chrysler") of Auburn Hills, Michigan. 75 FR 34483–84 (June 17, 2010). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. **1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive vehicles and designs therefor by reason of infringement of U.S. Patent No. D513,395. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named several respondents including Vehicles Online, Inc. ("Vehicles") of Charlotte, North Carolina; Boat N RV Supercenter ("Boat N RV") of Rockwood, Tennessee; and Shanghai Tandem Industrial Co., Ltd. ("Shanghai Tandem") of China.

On July 7, 2010, Chrysler moved, pursuant to 19 CFR 210.16, for: (1) An order directing respondents Vehicles and Boat N RV to show cause why they should not be found in default for failure to respond to the complaint and notice of investigation as required by § 210.13; and (2) the issuance of an initial determination ("ID") finding Vehicles and Boat N RV in default upon their failure to show cause. On July 19, 2010, the ALJ issued Order No. 8 which required Vehicles and Boat N RV to show cause no later than August 2, 2010, as to why they should not be held in default and judgment rendered against them pursuant to § 210.16. Boat N RV responded to Order No. 8, but no response was received from Vehicles.

The presiding administrative law judge ("ALJ") issued an ID on August 11, 2010, finding Vehicles in default, pursuant to §§ 210.13, 210.16, because Vehicles did not respond to the complaint and notice of investigation, or to Order No. 8 to show cause. On September 9, 2010, the Commission issued notice of its determination not to review the ALJ's ID finding Vehicles in default.

On August 19, 2010, Chrysler moved, pursuant to 19 CFR 210.16, for: (1) An order directing respondent Shanghai Tandem to show cause why it should not be found in default for failure to respond to the complaint and notice of investigation as required by § 210.13; and (2) the issuance of an ID finding Shanghai Tandem in default upon its failure to show cause. On August 31, 2010, the ALJ issued Order No. 12 which required Shanghai Tandem to show cause no later than September 14, 2010, as to why it should not be held in default and judgment rendered against it pursuant to § 210.16.

The ALJ issued an ID on September 22, 2010, finding Shanghai Tandem in default, pursuant to §§ 210.13, 210.16, because Shanghai Tandem did not respond to the complaint and notice of investigation, or to Order No. 12 to show cause. On October 14, 2010, the Commission issued notice of its determination not to review the ALJ's ID finding Shanghai Tandem in default.

On October 29, 2010, complainant Chrysler filed declarations requesting immediate relief against the defaulting respondents. On November 15, 2010, the Commission determined not to review an ID (Order No. 17) terminating the last remaining respondents, including Boat N RV, on the basis of a consent order.

Section 337(g)(1) (19 U.S.C. **1337(g)(1)) and Commission Rule 210.16(c) (19 CFR **210.16(c)) authorize the Commission to order limited relief against a respondent found in default, unless after consideration of the public interest factors, it finds that such relief should not issue. The Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry are either adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on December 6, 2010. Reply submissions must be filed no later than the close of business on December 14, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.16 and 210.50).

By order of the Commission.

Issued: November 29, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–30280 Filed 12–1–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–9]

Certain Festive Articles: Recommendations for Modifying the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Change in date for transmitting recommendations to the President.

SUMMARY: The Commission has changed the date on which it intends to report its recommendations to the President in this matter from November 29, 2010, to December 13, 2010, to allow more time to complete the report, including its recommendations.

DATES: *December 13, 2010:* Transmittal of recommendations to the President.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. The public record for this collection of proposals may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: David Beck, Director, Office of Tariff Affairs and Trade Agreements (202–205–2603, fax 202–205–2616, *david.beck@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Affairs (202–205–1819, *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet Web site at *http://www.usitc.gov.* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Notice of institution of the investigation and opportunity to comment on proposed recommendations was published in the **Federal Register** on September 20, 2010 (75 FR 57293). The period for filing written submissions closed on October 22, 2010.

Issued: November 24, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–30281 Filed 12–1–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1534]

Interview Room Video System Standard Special Technical Committee Request for Proposals for Certification and Testing Expertise

AGENCY: National Institute of Justice.

ACTION: Notice of Request for Proposals for Certification and Testing Expertise.

SUMMARY: The National Institute of Justice (NIJ) is in the process of developing a new Interview Room Video System Standard and corresponding certification program requirements. This work is being performed by a Special Technical Committee (STC), comprised of practitioners from the field, researchers, testing experts, certification experts, and representatives from stakeholder organizations. It is anticipated that the STC members will participate in six 2-day meetings over a 12-month time period with the goal of completing development of the standard and certification program requirements. It is anticipated that STC meetings will begin in January 2011. Travel expenses and per diem will be reimbursed for all STC meetings; however, participation time will not be funded. NIJ is seeking representatives from (1) certification bodies and (2) test laboratories with experience in programs for similar types of electronic equipment. Additional preferred knowledge includes experience with video systems or experience with law enforcement operations. There are up to four positions to be filled on the STC, and NIJ will accept the first 20 submissions for review.

Interested parties are requested to nominate individuals from their organizations and submit no more than two pages describing the nominee's applicable experience, preferred knowledge, and affiliations with standards development organizations. This information shall be submitted to Frances Scott at *frances.scott@usdoj.gov* by December 13, 2010. The submissions will be reviewed, and participants will be notified regarding their acceptance by January 17, 2011.

FOR FURTHER INFORMATION CONTACT: Frances Scott by telephone at 202–305–9950 [**Note:** this is not a toll-free telephone number], or by e-mail at *frances.scott@usdoj.gov.*

John Laub,

Director, National Institute of Justice.

[FR Doc. 2010–30294 Filed 12–1–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1535]

License Plate Reader Standard Special Technical Committee Request for Proposals for Certification and Testing Expertise

AGENCY: National Institute of Justice.

ACTION: Request for Proposals for Certification and Testing Expertise.

SUMMARY: The National Institute of Justice (NIJ) is in the process of developing a new License Plate Reader Standard and corresponding certification program requirements. This work is being performed by a Special Technical Committee (STC), comprised of practitioners from the field, researchers, testing experts, certification experts, and representatives from stakeholder organizations. It is anticipated that the STC members will participate in six 2-day meetings over a 12-month time period with the goal of completing development of the standard and certification program requirements. It is anticipated that STC meetings will begin in January 2011. Travel expenses and per diem will be reimbursed for all STC meetings; however, participation time will not be funded. NIJ is seeking representatives from (1) certification bodies and (2) test laboratories with experience in programs for similar types of electronic equipment. Additional preferred knowledge includes experience with video systems or experience with law enforcement operations. There are up to four positions to be filled on the STC, and NIJ will accept the first 20 submissions for review.

Interested parties are requested to nominate individuals from their organizations and submit no more than two pages describing the nominee's applicable experience, preferred knowledge, and affiliations with standards development organizations. This information shall be submitted to Frances Scott at *frances.scott@usdoj.gov* by December 13, 2010. The submissions will be reviewed, and participants will be notified regarding their acceptance by January 17, 2011.

FOR FURTHER INFORMATION CONTACT: Frances Scott by telephone at 202–305–9950 [**Note:** this is not a toll-free telephone number], or by e-mail at *frances.scott@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2010–30293 Filed 12–1–10; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL TRANSPORTATION SAFETY BOARD

Proposed Information Collection Activity: Submission for OMB Review; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing that it is submitting an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act. This ICR describes a form that the NTSB plans to use to obtain the contact information of family members and friends of those persons who have been involved in transportation accidents, as well as the survivors of those accidents, who seek to receive periodic updates from the NTSB's Office of Transportation Disaster Assistance. This Notice informs the public that they may submit comments concerning the proposed use of this form to the NTSB Desk Officer at the OMB.

DATES: Submit written comments regarding this proposed collection of information by January 3, 2011.

ADDRESSES: Respondents may submit written comments on the collection of information to the Office of Information and Regulatory Affairs of the Office of Management and Budget, *Attention:* Desk Officer for the National Transportation Safety Board, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Max Green, NTSB Office of Transportation Disaster Assistance, at (202) 314–6611.

SUPPLEMENTARY INFORMATION: In accordance with OMB regulations that require this Notice for proposed ICRs, the NTSB herein notifies the public that it may submit comments on this proposed ICR to OMB. 5 CFR 1320.10(a).

The NTSB will use the form to collect e-mail and mailing addresses, as well as telephone contact information in order

to provide information to victims of transportation accidents, and/or victims' family members and friends. The NTSB's purpose in proposing to use the form is to ensure that the NTSB has correct contact information for family members and friends of victims and/or survivors to whom the Office of Transportation Disaster Assistance will provide information. The form will solicit the following information: (1) First and last name of family member, friend, or survivor who seeks to receive updates; (2) home, cellular, and/or other telephone number; (3) e-mail address; (4) mailing address; (5) victim's name and description of requestor's relationship to victim; and (6) other comments or instructions, if desired.

The NTSB notes that completion of the form is voluntary. In addition, the NTSB will accept forms that are only partially completed; for example, some individuals may not wish to include their telephone numbers, but will include their e-mail addresses. The NTSB accepts all forms that contain any type of contact information, as the NTSB is committed to providing information to and coordinating services for family members, friends, and survivors of transportation accidents. Once a person completes the form, the NTSB will add their name to a list of individuals whom the NTSB will contact to provide information and coordinate services.

The NTSB has carefully reviewed the form to ensure that it has used plain, coherent, and unambiguous terminology in its request for information. The form is not duplicative of other agencies' collections of information. The NTSB believes this proposed form, given its brevity, will impose a minimal burden on respondents: the NTSB estimates that respondents will spend, at most, 10 minutes in completing the form. The NTSB estimates that approximately 50 respondents per year will complete the form, but notes that this number may vary, given the unpredictable nature of the frequency of transportation accidents.

Dated: November 29, 2010.

Candi Bing,

Federal Register Liaison Officer.

[FR Doc. 2010–30300 Filed 12–1–10; 8:45 am]

BILLING CODE 7533–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold its second field hearing to examine the municipal securities markets on Tuesday, December 7, 2010 at 9 a.m.

The hearing will include panel discussions focusing on market stability and liquidity, investor impact, self-regulation, accounting and Build America Bonds.

The panel discussion and presentations will take place in the Auditorium of the Commission's headquarters at 100 F Street, NE., Washington, DC and will be open to the public with seating on a first-come, first-served basis. Visitors will be subject to security checks. The hearing also will be webcast live at *http://www.sec.gov.*

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 29, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–30321 Filed 11–30–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on December 3, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will consider a recommendation to propose joint rules with the Commodity Futures Trading Commission relating to the definitions of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," Major Security-Based Swap Participant," and "Eligible Contract Participant."

Commissioner Aguilar, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 30, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–30407 Filed 11–30–10; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Interagency Task Force on Veterans Small Business Development Meeting Notice

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Interagency Task Force Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the second public meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

DATES: Friday, December 10, 2010, from 9 a.m. to 12 Noon in the Eisenhower Conference Room, Side A & B, located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOB's) and service-disabled veterans (SDVOSB'S). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to "six focus areas": (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and (6) Making other improvements to support veterans' business development by the Federal government.

The Interagency Task Force on Veterans Small Business Development shall submit to the President, no later than one year after its first meeting, a report on the performance of its functions and any proposals developed pursuant to the "six focus areas" identified above. The purpose of the meeting is scheduled as a full Task Force meeting. The agenda will include presentations and discussion from the Task Force Subcommittees on their progress regarding the "six focus areas" of the Task Force. In addition, the Task Force will allow time to obtain public comment from individuals and representatives of organizations regarding the areas of focus.

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 Task Force must contact Raymond B. Snyder by December 7, 2010, by e-mail in order to be placed on the agenda. Comments for the Record should be applicable to the "six focus areas" of the Task Force and e-mailed prior to the meeting for inclusion in the public record; verbal presentations, however, will be limited to five minutes in the interest of time and to accommodate as many presenters as possible. Written comments should be e-mailed to Raymond B. Snyder, Deputy Associate Administrator, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, e-mail address: *raymond.snyder@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Raymond B. Snyder, Designated Federal Official for the Task Force, at (202) 205–6773; or by e-mail at: *raymond.snyder@sba.gov*, SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416. For more information, please visit our Web site at *http://www.sba.gov/vets.*

Dated: November 24, 2010.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2010–30302 Filed 12–1–10; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Listening Session Regarding Improving the Accessibility of Government Information

AGENCY: U.S. Council of CIOs, SSA.

ACTION: Notice of meeting.

On behalf of the Accessibility Committee of the U.S. Council of CIOs 29 U.S.C. 794d.

SUMMARY: This notice announces a listening session being conducted in response to a memo dated July 19, 2010, from the Office of Management and Budget (OMB) on "Improving the Accessibility of Government Information." Section 508 of the Rehabilitation Act (29 U.S.C. 794d) requires Federal agencies to buy and use electronic and information technology (EIT) that is accessible. The July memo directs agencies to take stronger steps toward improving the acquisition and implementation of accessible technology. In order to better understand the needs of diverse communities and provide better solutions, the U.S. Council of CIOs, in collaboration with the Chief Acquisition Officers Council, the GSA Office of Governmentwide Policy and the U.S. Access Board, is holding the second in a series of listening sessions to engage citizens and employees in expressing concerns and proposing ideas. Persons with disabilities, their advocates, technology companies, government employees and other interested parties are invited to participate.

DATES: The listening session will be held on Tuesday, December 14, 2010, from 2 p.m. to 5 p.m. Eastern Standard Time (EST).

Persons wishing to address the panel at the listening session can pre-register by contacting Emily Koo at (410) 965–4472 or *Innovate.Accessibility@ssa.gov*. Pre-registrants will be given priority in addressing the panel in Washington, DC. Registration will also be available in person in Washington, DC on the afternoon of the listening session.

Meeting Location: The listening session will be held at the Marvin Center at George Washington University, 800 21st St., Washington, DC, in the Grand Ballroom.

Accommodations: The listening session will have sign language interpreters; CART (real time captioning) services, Assistive Listening Devices (ALDs), microphones and materials will be available in Braille, large print and electronic formats. The Marvin Center is wheelchair accessible. Anyone needing other accommodations should include a specific request when registering in advance.

FOR FURTHER INFORMATION CONTACT: *mailto*: Emily Koo at (410) 965–4472 or *Innovate.Accessibility@ssa.gov*.

SUPPLEMENTARY INFORMATION: In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. Inaccessible technology interferes with an ability to obtain and use information quickly and easily. Section 508 was enacted to eliminate barriers in information technology, open new opportunities for people with disabilities, and encourage development of technologies that will help achieve these goals. The law applies to all Federal agencies when they develop, procure, maintain, or use electronic and information technology. Under Section 508 (29 U.S.C. '794 d), agencies must give disabled employees and members of the public access to information that is comparable to access available to others.

Effective implementation of Section 508 is an essential element of President Obama's principles of open government, requiring that all government and data be accessible to all citizens. In order for the goal of open government to be meaningful for persons with disabilities, technology must also be accessible, including digital content. In July 2010, the OMB took steps to assure that the Federal government's progress in implementing Section 508 is stronger and achieves results more quickly.

Section 508 requires the GSA to provide technical assistance to agencies on Section 508 implementation. GSA has created a number of tools, available at *http://www.Section508.gov,* to help agencies to develop accessible requirements, test the acceptance process, and share lessons learned and best practices. For example:

- The BuyAccessible Wizard, *http://www.buyaccessible.gov*, helps build compliant requirements and solicitations;
- The Quick Links site, *https://app.buyaccessible.gov/baw/KwikLinksMain.jsp*, provides pre-packaged Section 508 solicitation documents;
- The BuyAccessible Products and Services Directory, *https://app.buyaccessible.gov/DataCenter/* provides a registry of companies and accessibility information about their offerings; and
- The Section 508 blog *http://buyaccessible.net/blog/* provides a venue where stakeholders may share ideas and success stories, or engage in conversations on improving accessibility.

The OMB has directed that several actions be taken to improve 508 performance:

- By Mid-January 2011, the GSA Office of Governmentwide Policy (OGP) will provide updated guidance on making government EIT accessible. This guidance will build upon existing

resources to address challenges, increase oversight, and reduce costs associated with acquiring and managing EIT solutions that are not accessible.

• By Mid-January 2011, the GSA OGP will update its general Section 508 training to offer refreshed continuous learning modules that can be used by contracting officers, program/project managers (especially those managing IT programs), and contracting officer technical representatives (COTRs) as they fulfill their Federal Acquisition Certification requirements.

• In 2010, the GSA OGP and the Department of Justice (DOJ) will issue a survey to allow agencies to assess their implementation of Section 508, including accessibility of Web sites and other technology used by the agencies. This information will be used by the DOJ in preparing its next assessment of agency compliance as required by the Rehabilitation Act. The CIOC Accessibility Committee will also use this information to identify best practices and lessons learned.

• In the spring of 2011, the DOJ will issue a progress report on Federal agency compliance with Section 508, the first since 2004. Going forward, DOJ will meet its obligation to issue a report biennially.

• Beginning in FY 2011, the GSA OGP will begin providing OMB a quarterly summary report containing results of Section 508 reviews of a sample of solicitations posted on FedBizOpps.gov. GSA will provide the agencies a summary of the sampling results to facilitate sharing of best practices and successes, and to address common challenges.

This listening session will focus on what other steps the Federal government can take to increase the accessibility and usability of government information and data for persons with disabilities. Input is sought on the following questions:

• What can technology do to improve things for people with disabilities?

• What can the Federal government do to use technology better or in new ways?

• What can the Federal government do to make technology more accessible?

• What emerging technologies are being used by the Federal government that you are left out of?

• What technologies should the Federal government use that would enhance your interactions with the Federal government?

• What are State and local governments doing that the Federal government should follow?

• What can the Federal government do to influence technology accessibility?

• From the perspective of Federal employees, how has Section 508 improved your ability to do your job? How can implementation of Section 508 be improved?

• From the perspective of vendors, how can implementation of Section 508 be improved?

• What could the Federal government ask that would allow vendors to better show that their products meet accessibility needs?

• What improvements could be made to VPATs?

• Do you believe the IT industry would benefit from a professional certification or credential that denotes a company's expertise in accessibility? How could that be implemented and managed; and should the government play a role in making that happen?

• Feedback from the listening session will be used by, and shared across, agencies to improve accessibility and usability.

Karen Palm,

Associate Chief Information Officer.

[FR Doc. 2010–30273 Filed 12–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7244]

30-Day Notice of Proposed Information Collection: Form DS–3057, Medical Clearance Update, OMB 1405–0131

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Medical Clearance Update.

• *OMB Control Number:* 1405–0131.

• *Type of Request:* Extension of Currently Approved Collection.

• *Originating Office:* Office of Medical Services, M/MED/C/MC.

• *Form Number:* DS–3057.

• *Respondents:* Foreign Service Officers, State Department Employees, Other Government Employees and Family Members.

• *Estimated Number of Respondents:* 9,800 per year.

• *Estimated Number of Responses:* 9,800 per year.

• *Average Hours per Response:* 30 minutes per response.

• *Total Estimated Burden:* 4,900 hours.

• *Frequency:* On occasion.

• *Obligation to Respond:* Mandatory.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from December 2, 2010.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods: E-mail: *kastrich@omb.eop.gov.* You must include the DS form number, information collection title and OMB control number in the subject line of your message.

Mail (paper, disk or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget 725 17th Street NW., Washington, DC 20503. Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Barbara Mahoney, Department of State, Office of Medical Clearances, SA–15 Room 400, 1800 North Kent St., Rosslyn, VA 22209. PHONE 703–875–5413 and FAX 703–875–4850.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Form DS–3057 is designed to collect medical information to provide medical providers with current and adequate information to base decisions on whether a federal employee and family members will have sufficient medical resources at a diplomatic mission abroad to maintain the health and fitness of the individual and family members.

Methodology:

The information collected will be collected through the use of an

electronic forms engine or by hand written submission using a pre-printed form.

Dated: November 22, 2010.

Barbara Mahoney,

MED Clearance Chief, Office of Medical Services.

[FR Doc. 2010–30292 Filed 12–1–10; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice: 7255]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals (RFGP): International Sports Programming Initiative

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/SU–11–15.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates

Application Deadline: Friday, January 28, 2011.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the International Sports Programming Initiative. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for projects designed to reach out to youth and promote mutual understanding by increasing the professional capacity of those who design and manage youth sports programs in select countries in Africa, East Asia and the Pacific, the Near East and North Africa, South and Central Asia, Europe, and the Western Hemisphere. The focus of all programs must be on reaching out to both male and female youth ages 7–17 and/or their coaches/administrators. Programs designed to train elite athletes or coaches will not be considered. Eligible countries and territories in each region are: *Africa:* Botswana, Cameroon, Mali, Mozambique, Niger, Uganda, and Zambia; *East Asia and the Pacific:* Australia, Brunei, Burma, China, Federated States of Micronesia, Fiji, Laos, Malaysia, New Zealand, Singapore, Taiwan, and Timor-Leste; *Near East and North Africa:* Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia, Tunisia, United Arab Emirates, and West Bank/Gaza; *South and Central Asia:* Afghanistan, Bangladesh, India, Kazakhstan, Kyrgyzstan, Nepal, Maldives, Pakistan, Sri Lanka, Tajikistan, and Turkmenistan; *Europe:* Armenia, Azerbaijan, Bosnia, Cyprus, Kosovo, Montenegro, Serbia, and Turkey; and the *Western Hemisphere:* Argentina, Bolivia, El Salvador, Haiti, Mexico, Panama, Paraguay, and a multi-country program that MUST include Guyana, Surinam, and Trinidad and Tobago.

Proposals may address multiple countries, but all the countries must then be in the same region. Please *see* Section III.3. for more information on eligibility requirements. *Funding Under this Competition is pending the availability of FY 2011 funds.*

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The Office of Citizen Exchanges welcomes proposals for two-way exchanges (one component in the United States and the other in the chosen country) that directly respond to the thematic areas outlined below. Please *see* Section III.3. for more information on eligibility requirements.

Themes

(1) Training Sports Coaches

Exchanges funded under this theme will focus on aiding youth and secondary school coaches in the target countries in the development and implementation of appropriate training methodologies. The goal is to ensure the optimal technical proficiency among the coaches participating in the program, while also emphasizing the role sports can play in the long-term well-being of youth.

(2) Youth Sports Management

Exchanges funded under this theme will enable American and foreign youth sport coaches, administrators, and sport association officials to share their experiences in managing and organizing youth sports activities. These exchanges should advance cross-cultural understanding of the role of sports as a significant factor in educational success.

(3) Sport and Disability

Exchanges funded under this theme are designed to promote and sponsor sports, recreation, fitness, and leisure events for children and adults with disabilities. Project goals include improving the quality of life for people with disabilities by providing affordable, inclusive sports experiences that build self-esteem and confidence, enhancing active participation in community life, and making a significant contribution to the physical and psychological health of people with disabilities. Proposals under this theme aim to demonstrate that people with a disability can be included in sports opportunities in their communities, and will develop opportunities for them to do so.

(4) Sport and Health

Exchanges funded under this theme will focus on effective and practical ways to use sports personalities and sports health professionals to increase awareness among young people of the importance of following a healthy lifestyle to reduce illness, prevent injuries and speed rehabilitation and recovery. Emphasis will be on the responsibility of the broader community to support healthy behavior. The project goals are to promote and integrate scientific research, education, and practical applications of sports medicine and exercise science to maintain and enhance physical performance, fitness, health, and quality of life. (Actual medical training and dispensing of medications are outside the purview of this theme.)

The pursuit of academic degrees from U.S. institutions is not an acceptable focus of this program. Please *see* Section III.3. for more information on eligibility requirements.

No guarantee is made or implied that grants will be awarded in all themes or for all countries listed.

Audience: The intended audience is non-elite youth, coaches, community leaders, and non-governmental organizations.

Ideal Program Model: The following are suggested program structures:

- A U.S. grantee identifies U.S. citizens to conduct a multi-location, in-country program overseas that includes clinics and training sessions for: male and female athletes; government officials (Ministry of Sports and Ministry of Education); coaches (adult

and youth); NGO representatives (including representatives from relevant sports federations); community officials (including local authorities associated with recreational facilities); youth audiences (equal numbers of boys and girls); and sports management professionals to support one of the themes listed.

• An in-country partner overseas (a local university, government agency or other appropriate organization, such as a relevant sports federation) co-hosts an activity with the U.S. grantee institution, and participates in the selection of participants for a U.S. program.

• A U.S. program that includes site visits designed to provide participants with exposure to American youth and coaches, sports education in the United States, background information on U.S. approaches to the themes listed in the announcement, relevant cultural activities, and a debriefing and evaluation.

• U.S. experts who worked with participants from overseas implement an in-country program.

• Participants in the U.S. program design in-country projects and serve as co-presenters.

• Materials are translated into the relevant language for use in future projects.

• Small grants are dispersed for projects designed to expand the exchange experience.

• All participants are encouraged to enroll in the Bureau of Education and Cultural Affairs' alumni Web site *https://alumni.state.gov*.

U.S. Embassy Involvement: Applicants are *strongly encouraged* to consult with Public Affairs Officers at U.S. Embassies in relevant countries as they develop proposals responding to this RFGP. It is important that the proposal narrative clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. Embassy in the relevant country/countries to develop plans for project implementation, to select project participants, and to publicize the program through the media. Proposals should acknowledge U.S. Embassy involvement in the final selection of all participants.

Media: Proposals should include specific strategies for publicizing the project, both in the United States and overseas, as applicable. Sample materials can be included in the appendix. In any contact with the media (print, television, Web, *etc.*) applicants must acknowledge the SportsUnited Division of the Bureau of Educational and Cultural Affairs of the U.S. Department of State funding for the program. Prior to information being released to the media, the ECA Program Office(r) must approve the document. All grantees are required to submit photos, highlights, and/or media clips for posting on the ECA Web site: *http://exchanges.state.gov/sports/*.

Participant Selection: Proposals should clearly describe the types of persons that will participate in the program, as well as the participant recruitment and selection processes. It is a priority of the office to include female participants in all of its programs. In the selection of foreign participants, the Bureau and U.S. Embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When U.S. participants are selected, grantee institutions must provide their names and biographical data to the Program Officer at the SportsUnited Office. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2011.

Approximate Total Funding: $2,000,000.

Approximate Number of Awards: 8–12.

Approximate Average Award: $225,000.

Ceiling of Award Range: $225,000.

Floor of Award Range: $60,000.

Anticipated Award Date: Pending availability of funds, August 31, 2011.

Anticipated Project Completion Date: September 30, 2012–June 30, 2014.

Projects under this competition may range in length from one to three years depending on the number of project components, the country/region targeted and the extent of the evaluation plan proposed by the applicant. The Office of Citizen Exchanges strongly encourages applicant organizations to plan enough time after project activities are completed to measure project outcomes. Please refer to the Program Monitoring and Evaluation section, item IV.3d.3 below, for further guidance on evaluation.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations that only qualify for the $60,000 level may choose to conduct a one-way exchange, but must explain how the objectives of Americans interacting with foreign participants will still be achieved.

(b) *Technical Eligibility:* It is imperative that all proposals follow the requirements outlined in the Proposal Submission Instructions (PSI) technical format and instructions document. Additionally, all proposals must comply with the following or they will result in your proposal being deemed technically ineligible and will not receive further consideration in the review process:

• Applicants may not submit more than one (1) proposal for this competition. Organizations that submit proposals that exceed these limits will result in having all of their proposals deemed technically ineligible.

• Proposals for countries that are not designated in the RFGP or that address more than one region will be deemed technically ineligible.

• Proposals for themes not listed above will be deemed technically ineligible.

• The Office of Citizen Exchanges does not support proposals limited to conferences or seminars (*i.e.,* one- to fourteen-day programs with plenary

sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition. No funding is available exclusively to send U.S. citizens to conferences or conference type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

• The Office of Citizen Exchanges does not support academic research or faculty or student fellowships. Proposals that have only an academic focus will be deemed technically ineligible.

IV. Application and Submission Information

Before submitting a proposal, all applicants are strongly encouraged to consult with the Washington, DC-based Department of State contact for the themes/regions listed in this solicitation.

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact: Ryan Murphy, U.S. Department of State, Bureau of Educational and Cultural Affairs, SportsUnited Division, ECA/PE/C/SU, SA–5, Floor 3, 2200 C Street, NW., Washington, DC 20037, tel: (202) 632–6058, fax: (202) 632–6492, *MurphyRM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/SU–11–15 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from *http://www.grants.gov.* Please *see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Ryan Murphy and refer to the Funding Opportunity Number ECA/PE/C/SU–11–15 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/sports/index/sports-grant-competition.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative, detailed timeline and detailed budget. Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3.c. All Federal award recipients and sub-recipients must maintain current registrations in the Central Contractor Registration (CCR) database and have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Recipients and sub-recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. All entities must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.

You *must* have nonprofit status with the IRS at the time of application. *Please note:* Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private non-profit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received non-profit status from the IRS within the past four years, you must submit the necessary documentation to verify non-profit status as directed in the PSI document. Failure to do so will cause your proposal to be deemed technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all

assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20037.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes. Overall, the quality of your monitoring and evaluation plan will be judged on how well it: (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria).

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Department of State Acknowledgement

All recipients of ECA grants or cooperative agreements should be prepared to state in any announcement or publicity where it is not inappropriate that activities are assisted financially by the Bureau of Educational and Cultural Affairs of the U.S. Department of State under the authority of the Fulbright-Hays Act of 1961, as amended. In any contact with the media

(print, television, Web, *etc.*) applicants must acknowledge the SportsUnited Division of the Bureau of Educational and Cultural Affairs of the U.S. Department of State funding for the program. Prior to information being released to the media, the ECA Program Office(r) must approve the document.

Alumni Outreach/Follow-On Programming and Engagement

Please refer to the Proposal Submissions Instruction (PSI) document for additional guidance.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. For this competition, requests should not exceed $225,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please note that the Bureau of Educational and Cultural Affairs does not fund programs that involve building of structures of any kind, including playing fields, recreation centers, or stadiums.

IV.3e.2. Allowable costs for the program include the following:

1. *Travel.* International and domestic airfare; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://www.gsa.gov/perdiem.* ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://aoprals.state.gov/content.asp?content_id=184&menu_id=78.*

3. *Interpreters.* For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both "lodging" and "M&IE") and transportation costs per interpreter. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

4. *Book and Cultural Allowances.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. *Room Rental.* The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. *Materials.* Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. *Equipment.* Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

9. *Working Meal.* A maximum of one working meal may be authorized per project unless extenuating circumstances exist, in which case prior approval must be obtained from a DOS Grants Officer. Unless additional working meals are approved, the Recipient agrees to reduce the participants per diem to cover the cost of any additional working meals. In addition, per capita costs may not exceed $45 excluding room rental. The number of invited guests shall not exceed participants by more than a factor of two-to-one.

10. *Return Travel Allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered during their participation in the U.S. program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE). The grantee must notify the program office to enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire Transfer Fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. *In-country Travel Costs for visa processing purposes.* Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: Friday, January 28, 2011.

Reference Number: ECA/PE/C/SU–11–15.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above

Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight (8) copies of the application should be sent to: U.S. Department of State, Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/SU–11–15, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. Embassy/ies for their review.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov *(http://www.grants.gov).* Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support.

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be deemed technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section of the relevant Embassy, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:*

Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of proposed in-country partners should be clearly described. A discussion of how the applicant intends to address language issues should be included, if needed.

2. *Institutional Capacity:* Proposals should include: (1) The institution's

mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards—U.S. government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. *Proposals whose administrative costs are less than twenty-five (25) percent of the total funds requested from the Bureau will be deemed more competitive under this criterion.* Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive in this category.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the PSI and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

5. *Post-Grant Activities:* Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities must not appear in the proposal budget, but should be outlined in the narrative.

6. *Program Monitoring and Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, and proposals should include draft data collection instruments (surveys, questionnaires, *etc.*) in Tab E. *See* the "Program Monitoring/Evaluation" section, item IV.3d.3 above for more information on the components of a competitive evaluation plan. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant. Please refer to the "Program Management/ Evaluation" section, item IV.3d.3 above for more guidance.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

For assistance awards involving the Palestinian Authority, West Bank, and Gaza:

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact (Ryan Murphy, ECA/PE/C/SU, tel: (202) 632–6058, *MurphyRM@state.gov*) for additional information.

Special Provision for Performance in a Designated Combat Area

All Recipient personnel deploying to areas of combat operations, as designated by the Secretary of Defense (currently Iraq and Afghanistan), under assistance awards over $100,000 or performance over 14 days must register in the Department of Defense maintained Synchronized Pre-deployment and Operational Tracker (SPOT) system. Recipients of Federal assistance awards shall register in SPOT before deployment, or if already in the designated operational area, register upon becoming an employee under the assistance award, and maintain current data in SPOT. Information on how to register in SPOT will be available from your Grants Officer or Grants Officer Representative during the final negotiation and approval stages in the Federal assistance awards process. Recipients of Federal assistance awards are advised that adherence to this policy and procedure will be a requirement of all final Federal assistance awards issued by ECA.

Recipient performance may require the use of armed private security personnel. To the extent that such private security contractors (PSCs) are required, grantees are required to ensure they adhere to Chief of Mission (COM) policies and procedures regarding the operation, oversight, and accountability of PSCs.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:
http://www.whitehouse.gov/omb/grants.
http://fa.statebuy.state.gov.

VI.3 Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports which should include the activities completed during that quarter, information about any participants of the activities, and any adjustments in the program timeline.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three weeks prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Ryan Murphy, U.S. Department of State, Bureau of Educational and Cultural Affairs, SportsUnited Division, ECA/PE/C/SU, SA–5, Floor 3, 2200 C Street, NW., Washington, DC 20037, tel: (202) 632–6058, fax: (202) 632–6492, *MurphyRM@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and reference number ECA/PE/C/SU–11–15.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 23, 2010.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–30226 Filed 12–1–10; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice: 7254]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Ambassadors Program With South America

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/PY–11–18.

Catalog of Federal Domestic Assistance Number: 19.415.

Application Deadline: January 27, 2011.

Executive Summary

The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Youth Ambassadors Program with South America. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth and adult participants, to provide the participants with three-week exchanges focused on civic education, community service, and youth leadership development, and to support follow-on projects in their home communities. Exchange delegations will travel from 10 South American countries to the United States, and U.S. exchange delegations will travel to select countries. ECA anticipates awarding multiple cooperative agreements that cover the administration of this program for two years. The awards will be contingent upon the availability of FY–2011 funds.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Overview

The Youth Ambassadors Program is a three-week exchange for high school youth (ages 15–18) and adult educators focused on civic education, community service, and youth leadership development. Subthemes that explore these overarching themes may be added,

such as the environment or business and entrepreneurship. Participants engage in a variety of activities such as workshops on leadership and service, community site visits related to the program themes and subthemes, interactive training, presentations, visits to high schools, local cultural activities, civic education programming in Washington, DC or the capital city of the partner country, and other activities designed to achieve the program's stated goals. Multiple opportunities for participants to interact meaningfully with their peers of the host country must be included. Follow-on activities with the participants are an integral part of the program, as the students apply the knowledge and skills they have acquired by planning service projects in their home communities.

The FY2011 Youth Ambassadors Program will focus on the following countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela, and the United States. It is anticipated that foreign participants will travel from all of these countries to the United States, and that American participants will travel to select countries.

The goals of the program are to:

(1) Promote mutual understanding between the people of the United States and the people of South America;

(2) Prepare youth leaders to become responsible citizens and contributing members of their communities;

(3) Influence the attitudes of the leaders of a new generation; and

(4) Foster relationships among youth from different ethnic, religious, and national groups and create hemispheric networks of youth leaders, both within the participating countries and internationally.

The objectives of the program are for participants to:

(1) Demonstrate a better understanding of the elements of a participatory democracy as practiced in the United States;

(2) Demonstrate critical thinking and leadership skills; and

(3) Demonstrate skill at developing project ideas and planning a course of action to bring the projects to fruition.

The primary themes of the program are:

(1) Civic Education (Citizen Participation, Grassroots Democracy and Rule of Law);

(2) Community Service; and

(3) Youth Leadership Development.

For each project, applicant organizations must focus on these primary themes. Secondary themes, such as the environment or business and entrepreneurship, will serve to illustrate the more abstract concepts of the primary themes. For example, the secondary theme of the environment can be used to examine how a group of individuals with an idea can start a recycling campaign in their community.

Using these goals, objectives, and themes, applicant organizations should identify their own specific and measurable outputs and outcomes based on the project specifications provided in this solicitation. ECA does not anticipate award recipients achieving these overarching goals throughout one project; however, proposals should indicate how these objectives will be reached through these themes, and how they will contribute to the achievement of the stated goals.

Project Options

The total amount of funding available is $3,000,000, pending availability of funds. ECA anticipates awarding multiple cooperative agreements for the management of the Youth Ambassadors Program with South America that together will cover all 10 countries. The Bureau reserves the right to reduce, revise, or increase proposal project configurations, budgets, and participant numbers in accordance with the needs of the program and the availability of funds. In addition, the Bureau reserves the right to adjust the participating countries should conditions change in the partner country or if other countries are identified as Department priorities. Organizations may apply for one, two, or three of the options outlined below, but must submit only one proposal under this competition. Multiple submissions will be declared technically ineligible and will not be considered further in the review process. These options will allow applicants the flexibility to propose working with the countries in which they have the best infrastructure. The Bureau strongly urges organizations to focus their applications on countries where they have the strongest organizational capacity. This capacity must be thoroughly described in the proposal. Please note the total approximate funding for each option.

Option 1: Argentina, Bolivia, Chile, Paraguay, Peru, Uruguay, and Venezuela (Approximately $2,000,000 Total, With One to Four Awards)

A project conducted in English for participants from Argentina, Bolivia, Chile, Paraguay, Peru, Uruguay, and/or Venezuela. Approximately 15–20 participants from each country will travel to the United States each year. Award recipients are encouraged to send delegations that include participants from several countries; however not all delegations must travel to the United States at the same time. It is suitable to break them down into smaller single country or sub-regional groups. Applicants who plan to send a large delegation to the United States at one time must propose a plan to break it into smaller cohorts for most of the exchange activities. In addition to the South American participants, 10–15 participants from the United States will travel to Paraguay and/or Uruguay each year. Delegations of American participants may alternate between specified countries and travel to Uruguay the first year and Paraguay the following year, or delegations may travel to both countries each year. The American participants should have conversational Spanish skills. Applicants are encouraged to be creative and flexible in making arrangements that will help meet our program goals.

ECA may award more than one cooperative agreement from this option. Applicants must include at least two South American countries, and may include up to all seven countries, in their proposals. Applicants should apply for those countries where they have a strong organizational capacity with their in-country partner.

Option 2: Colombia and Ecuador (Approximately $500,000)

A regional project conducted in Spanish for participants from Colombia and Ecuador. Approximately 15–20 participants from each country will travel to the United States each year. This regional project should include activities where participants from both countries interact to share ideas and work on program themes during the exchange in the United States. Delegations may be broken up into smaller sub-groups, but should keep a mix of participants from both countries. Special emphasis should be placed on recruiting participants from underserved communities. Spanish language interpreters should be provided for U.S. programming. In addition to the South American participants, 10–15 participants from the United States may travel to Ecuador. The American participants should have conversational Spanish skills.

Option 3: Brazil (Approximately $500,000)

A single country, reciprocal project conducted in English for participants from Brazil and the United States. The total number of participants each year will be 37 Brazilians (35 youth, 2 adults) and 10–15 Americans. For the Brazil project only, the U.S. Embassy in

Brasilia will serve as the in-country partner. The Embassy will manage the recruitment and selection of the Brazilian participants, cover their in-country expenses, arrange and purchase the international travel, oversee their follow-on activities, and administer the Brazil-based exchange activities for the U.S. participants. The award recipient will be responsible for organizing and funding the U.S.-based exchange activities for the Brazilian participants. The recipient will also be responsible for recruiting and selecting the American participants and covering their pre-departure expenses, including passports and visas fees and international travel, paying for all program expenses in Brazil, as well as managing their follow-on activities. The exchanges to the U.S. will take place in January 2012 and January 2013, and the exchanges to Brazil will take place in the summer of 2012 and 2013.

Participants

Both the youth and adult participants must meet the following eligibility requirements:

(1) Be citizens of the country from which they are applying;

(2) Be selected through a merit-based competition;

(3) Represent the diversity of their home country; and

(4) Demonstrate an interest in the partner country and the project themes.

Criteria for selection of the participants will include leadership skills, an interest in service to the community, strong academic and social skills, openness and flexibility. To reach beyond the elite, participants should be recruited from underserved or disadvantaged populations of youth in these countries, including public high schools. Geographic, socio-economic, and ethnic diversity is important, including outreach to indigenous and Afro-descendent populations. It is desirable that a few participants live in the same community to facilitate future collaboration upon their return to their home country.

The youth participants must be high school students aged 15 to 18 years old, with at least one semester of high school remaining. The adult participants may be teachers, trainers, school administrators, and/or community leaders who work with youth. They will have the dual role of both exchange participant and chaperone. The ratio of youth to adults should be approximately 10:1, depending on the size of the exchange delegation.

Except for participants from Colombia and Ecuador, all South American participants must have sufficient English language proficiency to participate fully in interactions with their host families and their peers and in educational activities. A similar level of Spanish language ability is required for the American participants traveling to Ecuador, Paraguay and Uruguay. Portuguese is not required for the Americans traveling to Brazil. For the U.S.-based activities that will be conducted in Spanish, the award recipient must provide interpretation and place the participants in host families where at least one member speaks Spanish.

Organizational Capacity

Applicant organizations must demonstrate their capacity for conducting international youth exchanges, focusing on three areas of competency: (1) Provision of projects that address the goals, objectives, and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience working on programs in the region. Organizations must demonstrate their capacity to manage a complex, multi-phase program with several separate exchange projects.

In addition to their U.S. presence, applicants must have the organizational capacity in the relevant countries through their own offices or through a partner organization or institution to recruit and select participants for the project, to provide follow-on activities, and to organize a content-rich program for the U.S. participants, if specified. The importance of a viable, experienced in-country partner cannot be over-emphasized. Applicants should consult with their partners and involve them in the preparation of the proposal. Before submitting a proposal, applicants may consult with Public Affairs Sections in U.S. Embassies for suggested partner organizations or concerning the selection and reliability of in-country partner organizations. Please e-mail ECA Program Officer Jennifer Phillips (*PhillipsJA@state.gov*) for Embassy contact information.

U.S. Embassy Involvement

It is important that the proposal narrative clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. Embassy in the host country to develop plans for project implementation, including recruitment, selection and orientation of participants, publicity events, and follow-on activities, once a cooperative agreement is awarded. In countries where there is a reciprocal component involving U.S. citizen minors, the U.S. Embassy will provide oversight and monitoring; concur on housing arrangements, including host family locations (regions, neighborhoods); represent the U.S. Government while the exchange activities are taking place in the host country; and assist program staff and participants in the event of an emergency. At the same time, the cooperative agreement requires that the administering organization must be able to manage the program in the host country in its entirety, with little reliance on embassy staff for support. For the Brazil project only, the U.S. Embassy in Brasilia will serve as the in-country partner.

Guidelines

Pending the availability of funds, it is anticipated that the cooperative agreement will begin on or about July 1, 2011. The award period will span approximately two years, and will cover all aspects of the programming in South America and the United States—recruitment, selection, and orientation of the participants, three weeks of exchange activities, and support of follow-on activities. Planning and preparation will start in 2011, and the exchanges will take place at various points throughout 2012 and 2013. Applicants should propose the period of the exchange(s) in their proposals, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the recipient. In addition, while the second year of the award period may build on lessons learned from the first year, proposals should include a plan for keeping the essential elements of the exchange, from project themes to regional groupings, the same in the second year.

The award recipient will be responsible for the following:

Recruitment and Selection: Manage the recruitment and merit-based selection of youth and adult participants in cooperation with the Public Affairs Sections of the U.S. Embassies in the participating countries. Collaboration with Binational Centers (BNCs) is suggested, if possible. Once a cooperative agreement is awarded, the recipient must consult with the Public Affairs Section at the U.S. Embassy to review a participant recruitment and selection plan and to determine the degree of Embassy involvement in the process. Organizers must strive for regional, socio-economic, and ethnic diversity, as well as gender balance. For reciprocal projects sending U.S. participants to South America, the recipients must manage the recruitment and open, merit-based selection of U.S. participants. The Department of State

and/or its overseas representatives will have final approval of all selected delegations.

Orientations: Provide orientations for exchange participants and for those participating from the host communities, including host families.

Logistics: Manage all logistical arrangements, including passport and visa applications, international and domestic travel, ground transportation, accommodations, interpretation, group meals, and disbursement of stipends.

Exchange Activities: Design and plan three weeks of exchange activities that provide a creative and substantive program that develops both the youth and the adult participants' knowledge and skill base in civic education, community service, and youth leadership development. The exchange will take place in the capital city (Washington, DC or that of the host country) and in one or two other communities. The exchanges will focus primarily on interactive activities, practical experiences, and other hands-on opportunities that provide a substantive project on the specified program themes. Some activities should be school and/or community-based, and the projects will involve as much sustained interaction with peers of the host country as possible (for both the youth and adult participants). Cultural, social, and recreational activities will balance the schedule.

Accommodations: Arrange home stays for the participants in the United States with properly screened and briefed American families for the majority of the exchange period. In the partner countries, home stays are strongly desired whenever feasible in properly screened and briefed South American families. Criminal background checks must be conducted for members of host families (and others living in the home) who are 18 years or older.

Monitoring: Develop and implement a plan to monitor the participants' safety and well-being while on the exchange and to create opportunities for participants to share potential issues and resolve them promptly. The award recipient will be required to provide proper staff supervision and facilitation to ensure that the teenagers have safe and pedagogically rich programs. Staff, along with the adult participants, will assist the youth with cultural adjustments, provide societal context to enhance learning, and counsel students as needed. For the safety and security of both foreign and American participants, applicants must comply with the monitoring and supervision requirements, as well as the host family screening requirements, outlined in the POGI.

Follow-on Activities and In-Country Programming: Plan and implement activities in the participants' home countries, particularly by facilitating continued engagement among the participants, advising and supporting them in the implementation of community service projects, and offering opportunities to reinforce the ideas, values and skills imparted during the exchange. Exchange participants should return home from the exchange prepared to conduct projects that serve a need in their schools or communities. To amplify program impact, proposals should present creative and effective ways to address the project themes, for both program participants and their peers.

Evaluation: Design and implement an evaluation plan that assesses the short- and medium-term impact of the project on the participants as well as on host and home communities.

Please Note: In a cooperative agreement, the Department of State is substantially involved in program activities above and beyond routine grant monitoring. The Department's activities and responsibilities for the Youth Ambassadors Program are as follows:

(1) Provide advice and assistance in the execution of all program components.

(2) Facilitate interaction within the Department of State, to include ECA, the regional bureaus, and overseas posts.

(3) Arrange meetings with Department of State officials in Washington, DC and the partner countries.

(4) Approve the final candidate selection and alternates.

(5) Issue DS–2019 forms and J–1 visas for the foreign participants. All foreign participants will travel on a U.S. Government designation for the J Exchange Visitor Program.

(6) Approve applications, publicity materials, and final calendar of exchange activities.

(7) Approve housing arrangements, including the host families location (in South America only).

(8) Monitor and evaluate the program, through regular communication with the award recipient and possibly one or more site visits.

(9) In Brazil only, the U.S. Embassy will serve as the in-country partner and manage the recruitment and selection of the Brazilian participants, cover their in-country expenses, arrange and purchase the international travel, oversee their follow-on activities, and administer the Brazil-based exchange activities for the U.S. participants.

Additional Information

Award recipients will retain the name "Youth Ambassadors Program" to identify their project. All materials, publicity, and correspondence related to the program will acknowledge this as a program of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. The Bureau will retain copyright use of and be allowed to distribute materials related to this program as it sees fit.

The organization must inform the ECA Program Officer of their progress at each stage of the project's implementation in a timely fashion, and will be required to obtain approval of any significant program changes in advance of their implementation.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major project activities, and applicants should explain and justify their programmatic choices. Projects must comply with J–1 visa regulations for the International Visitor and Government Visitor category. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under Section I above.

Fiscal Year Funds: FY–2011.

Approximate Total Funding: $3,000,000.

Approximate Number of Awards: One to six.

Approximate Average Award: $500,000.

Floor of Award Range: $500,000.

Ceiling of Award Range: $3,000,000.

Anticipated Award Date: Pending availability of funds, July 1, 2011.

Anticipated Project Completion Date: 24–34 months after start date, to be specified by applicant based on project plan.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the

applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making multiple awards in amounts exceeding $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Proposed sub-award recipients are also limited to grant funding of $60,000 or less if they do not have four years of experience in conducting international exchanges.

(c.) The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(d.) Organizations may submit only one proposal (total) under this competition. If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process. Please note: Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, by telephone (202) 632–9352, fax (202) 632–9355, or e-mail *PhillipsJA@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–11–18 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please *see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Jennifer Phillips and refer to the Funding Opportunity Number ECA/PE/C/PY–11–18 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. *Please note:* Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing The J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when

particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (*Please note* that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package (POGI and PSI) for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: January 27, 2011.

Reference Number: ECA/PE/C/PY–11–18.

Methods of Submission

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2.) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six (6) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–11–18, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word, Excel, and/or PDF, to the program officer at *PhillipsJA@state.gov.* As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: *Grants.gov* Customer Support.

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.* Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation.

Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. *Quality of the program idea:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative, age-appropriate, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should also include a plan to support participants' community activities upon their return home.

2. *Program planning:* A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in participant recruitment and selection and in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources in both the United States and in the partner countries should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Program evaluation:* The proposal should include a plan to evaluate the program's success in meeting its goals, both as the activities unfold and after they have been completed. The proposal should include a draft survey questionnaire or other technique, plus a description of a methodology to link outcomes to original project objectives. The award recipient will be expected to submit intermediate reports after each project component is concluded.

6. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

VI. Award Administration Information

VI.1 Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.*

VI.3 Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports, including the SF–PPR–E and SF–PPR–F.

(4) Quarterly or interim reports, as required in the Bureau cooperative agreement.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV.3.d.3 Application and Submission Instructions above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Jennifer Phillips, Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0503, by telephone 202–632–9352, fax 202–632–9355, or e-mail *PhillipsJA@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and reference number ECA/PE/C/PY–11–18.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 23, 2010.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–30241 Filed 12–1–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35442]

R.J. Corman Railroad Company/ Central Kentucky Lines, LLC—Trackage Rights Exemption—CSX Transportation, Inc.

Pursuant to a written trackage rights agreement dated February 5, 2005,[1] CSX Transportation, Inc. (CSXT) has agreed to grant limited overhead trackage rights to R.J. Corman Railroad Company/ Central Kentucky Lines, LLC (RJCC) [2] over a CSXT line of railroad between the end of the Water Street Lead at milepost 00T 1.8 in Louisville, Ky., and milepost 00T 12.5 at HK Tower in Anchorage, Ky., a distance of approximately 10.7 miles. This notice was filed to correct a misdescription of the corporate process by which RJCC actually obtained these trackage rights in 2005.[3] In the original notices, *R.J. Corman Railroad Company/ Central Kentucky Lines, LLC—Acquisition and Operation Exemption—Line of R.J. Corman Railroad Property, LLC,* FD 34624 (STB served Feb. 23, 2005), and *R.J. Corman Railroad Property, LLC—Lease Exemption—Line of CSX Transportation, Inc.,* FD 34625 (STB served Mar. 4, 2005), RJCC stated that it acquired the rights from CSXT through its corporate affiliate, R.J. Corman Railroad Property, LLC (Railroad Property). Instead, RJCC acquired the rights directly from CSXT, as stated in this notice.[4]

The transaction may be consummated on or after December 16, 2010, the effective date of the exemption (30 days after the exemption is filed). The trackage rights will allow RJCC to move certain commodities between RJCC's main line across Kentucky and the Water Street Lead in Louisville, which RJCC leases from CSXT.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway–Trackage Rights–Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway–Lease and Operate–California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by December 9, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35442, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: November 26, 2010.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–30269 Filed 12–1–10; 8:45 am]

BILLING CODE 4915–01–P

[1] The original agreement was subsequently amended in April 2008 and August 2010.

[2] RJCC, a Class III carrier, is controlled by Richard J. Corman who also controls several other Class III rail carriers in the eastern United States. *See Richard J. Corman—Continuance in Control Exemption—R.J. Corman Railroad Company/ Central Kentucky Lines,* FD 34327 (STB served Apr. 14, 2003).

[3] While RJCC and Railroad Property originally filed a petition to reopen and modify the trackage rights portions of those notices to correct the misdescriptions, they subsequently filed a request to withdraw that petition. The request to withdraw will be addressed subsequently in a separate decision.

[4] The 2005 notices also involved the lease and sublease/operation of a CSXT line accurately described by the parties. The notices were published by the Board.

Federal Register

Thursday,
December 2, 2010

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 242
Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–63346; File No. S7–34–10]

RIN 3235–AK80

Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: In accordance with Section 763 ("Section 763") and Section 766 ("Section 766") of Title VII ("Title VII") of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Securities and Exchange Commission ("SEC" or "Commission") is proposing Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information ("Regulation SBSR") under the Securities Exchange Act of 1934 ("Exchange Act").[1] Proposed Regulation SBSR would provide for the reporting of security-based swap information to registered security-based swap data repositories or the Commission and the public dissemination of security-based swap transaction, volume, and pricing information. Registered security-based swap data repositories would be required to establish and maintain certain policies and procedures regarding how transaction data are reported and disseminated, and participants of registered security-based swap data repositories that are security-based swap dealers or major security-based swap participants would be required to establish and maintain policies and procedures that are reasonably designed to ensure that they comply with applicable reporting obligations. Finally, proposed Regulation SBSR also would require a registered SDR to register with the Commission as a securities information processor on existing Form SIP.

DATES: Comments should be received on or before January 18, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7– on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–34–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, Assistant Director, at (202) 551–5602, David Michehl, Senior Special Counsel, at (202) 551–5627, Sarah Albertson, Special Counsel, at (202) 551–5647, Natasha Cowen, Special Counsel, at (202) 551–5652, Yvonne Fraticelli, Special Counsel, at (202) 551–5654, Geoffrey Pemble, Special Counsel, at (202) 551–5628, Brian Trackman, Special Counsel, at (202) 551–5616, Mia Zur, Special Counsel, at (202) 551–5638, Kathleen Gray, Attorney, at (202) 551–5305, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing Regulation SBSR under the Exchange Act providing for the reporting of security-based swap information to registered security-based swap data repositories or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information. The Commission is soliciting comments on all aspects of the proposed rules and will carefully consider any comments received.

I. Introduction

A. Background

On July 21, 2010, the President signed the Dodd-Frank Act into law.[2] The Dodd-Frank Act was enacted to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system.[3] Title VII of the Dodd-Frank Act provides the Commission and the Commodity Futures Trading Commission ("CFTC") with the authority to regulate over-the-counter ("OTC") derivatives in light of the recent financial crisis, which demonstrated the need for enhanced regulation in the OTC derivatives markets. The Dodd-Frank Act is intended to close loopholes in the existing regulatory structure and to provide the Commission and the CFTC with effective regulatory tools to oversee the OTC derivatives markets, which have grown exponentially in recent years and are capable of affecting significant sectors of the U.S. economy. The primary goals of Title VII, among others, are to increase the transparency and efficiency of the OTC derivatives markets and to reduce the potential for counterparty and systemic risk.[4]

The Dodd-Frank Act provides that the CFTC will regulate "swaps," the Commission will regulate "security-based swaps" ("SBSs"), and the CFTC and the Commission will jointly regulate "mixed swaps."[5] The Dodd-

[1] 15 U.S.C. 78a *et seq.* All references in this release to the Exchange Act refer to the Securities Exchange Act of 1934, as amended by the Dodd-Frank Act.

[2] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111–203, H.R. 4173).

[3] *See id.* at Preamble.

[4] *See* "Financial Regulatory Reform—A New Foundation: Rebuilding Financial Supervision and Regulation," U.S. Department of the Treasury, pp. 47–48 (June 17, 2009).

[5] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System ("Federal Reserve"), shall jointly further define the terms "swap," "security-based swap," "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," "eligible contract participant," and "security-based swap agreement." These terms are defined in Sections 721 and 761 of the Dodd-Frank Act and, with respect to the term "eligible contract participant," in Section 1a(18) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1a(18), as re-designated and amended by Section 721 of the Dodd-Frank Act. Further, Section 721(c) of the Dodd-Frank Act requires the CFTC to adopt a rule to further define the terms "swap," "swap dealer," "major swap participant," and "eligible contract participant," and Section 761(b) of the Dodd-Frank Act requires the Commission to adopt a rule to further define the terms "security-based swap," "security-based swap dealer," "major security-based swap participant," and "eligible contract participant," with regard to SBSs, for the purpose of including transactions and entities that have been structured to evade Title VII of the Dodd-Frank Act. Finally, Section 712(a) of the Dodd-Frank Act provides that the Commission and CFTC, after consultation with the Federal Reserve, shall

Frank Act amends the Exchange Act to require the Commission to adopt rules providing for, among other things (1) the reporting of SBSs to a registered security-based swap data repository ("SDR") [6] or to the Commission; and (2) real-time public dissemination of SBS transaction, volume, and pricing information.[7] To fulfill these requirements, the Commission today is proposing Regulation SBSR, which would be comprised of Rules 900 to 911 under the Exchange Act. In preparation for the rulemakings required by the Dodd-Frank Act, the Commission and the CFTC held a joint public roundtable (the "Market Data Roundtable") on September 14, 2010, to gain further insight into many of the issues addressed in this proposal.[8] In addition, the Commission has offered the opportunity for the public to express its views on the Commission rulemakings required by the Dodd-Frank prior to proposing rules.[9] The rules proposed today generally take into account the views expressed at the Market Data Roundtable, as well as any comments received.

In a separate release, the Commission is today proposing new rules under the Exchange Act governing the security-based swap data repository registration process, duties, and core principles.[10] Proposed Rules 13n–1 through 13n–11 under the Exchange Act would, among other things, require SDRs to comply with the requirements and core principles described in Section 13(n) of the Exchange Act. An SDR also would be required to appoint a chief compliance officer and specify the duties of the chief compliance officer.

Taken together, the rules that the Commission proposes today would establish comprehensive regulation of SBS data and thus provide transparency for SBSs to regulators and the markets. The proposed rules would require SBS transaction information to be (1) provided to registered SDRs in accordance with uniform data standards; (2) verified and maintained by registered SDRs, which would serve as secure, centralized recordkeeping facilities that are accessible by regulators and relevant authorities; and (3) publicly disseminated in a timely fashion by registered SDRs. In combination, these proposed rules are designed to promote transparency and efficiency in the SBS markets and create an infrastructure to assist the Commission and other regulators in performing their market oversight functions.

In proposing these rules, the Commission is mindful that there may be differences between the SBS market and the other securities markets that the Commission regulates. For example, though the marketplace has developed standardized terms for various types of SBSs, contracts are nevertheless customizable. Furthermore, unlike bonds or equity securities, SBSs are not today readily fungible. The liquidity characteristics of SBSs also may differ in comparison with other markets. Relative to the overall equity markets, SBSs trade much less frequently, though the trading frequency of some illiquid equities would be comparable to that of some SBSs. The liquidity of SBSs compared to the bond market depends on the specifics of the SBS and the bond (*e.g.,* Treasury, corporate, municipal). Many bonds do not have standardized SBS analogs and would therefore be more liquid than bespoke customizable SBS contracts that would function as the analog. But some market participants have found the SBSs written on some issuers and securities to be more liquid and readily tradable during certain periods of time than the underlying securities themselves.

Another notable distinction is that the SBS market does not generally have the equivalent of a "retail" segment characterized by a high-volume of small-sized trades. Though some swaps on some interest rates, indices, and currencies may support high volumes, many SBSs trade infrequently. For example, an analysis by the staff of trading in single-name credit default swaps ("CDS") show that approximately 90% of single-name CDS on corporate issuers trade at an average of five times or less per day, with an average trade size of over $5 million.[11] This same analysis shows that 89% of single-name CDS on sovereign issuers trade at an average of ten times or less per day, with an average trade size of over $12 million.

The Commission also is mindful that, both over time and as a result of Commission proposals to implement the Dodd-Frank Act, the further development of the SBS market may alter some of the specific calculus for future regulation of reporting and real-time public dissemination of SBS transaction information. During the process of implementing the Dodd-Frank Act and beyond, the Commission will therefore closely monitor developments in the SBS market.

B. Overview of Security-Based Swap Reporting and Dissemination Requirements in the Dodd-Frank Act

1. Security-Based Swap Reporting Requirements

The Dodd-Frank Act adds several provisions to the Exchange Act that require the reporting of information relating to SBSs. Section 3C(e) of the Exchange Act [12] requires the Commission to adopt rules that provide for the reporting of SBS data as follows: (1) SBSs entered into before the date of enactment of Section 3C shall be reported to a registered SDR or the Commission no later than 180 days after the effective date of Section 3C (*i.e.,* 540 days after the enactment of the Dodd-Frank Act); and (2) SBSs entered into on or after the date of enactment of Section 3C shall be reported to a registered SDR or to the Commission no later than the later of (1) 90 days after the effective date of Section 3C (*i.e.,* 450 days after the enactment of the Dodd-Frank Act),

jointly prescribe regulations regarding "mixed swaps," as may be necessary to carry out the purposes of Title VII. To assist the Commission and CFTC in further defining the terms specified above, and to prescribe regulations regarding "mixed swaps" as may be necessary to carry out the purposes of Title VII, the Commission and the CFTC sought comment from interested parties. *See* Securities Exchange Act Release No. 62717 (August 13, 2010), 75 FR 51429 (August 20, 2010) (File No. S7–16–10) (advance joint notice of proposed rulemaking regarding definitions contained in Title VII of the Dodd-Frank Act) ("Definitions Release").

[6] A SDR is "any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security based swaps." *See* Section 3(a)(75) of the Exchange Act, 15 U.S.C. 78c(a)(75). The Commission is also proposing today new Rules 13n–1 through 13n–11 under the Exchange Act relating to the SDR registration process, the duties of SDRs, and the core principles for operating a registered SDR. *See* Securities Exchange Act Release No. 63347 (November 19, 2010) ("SDR Registration Proposing Release").

[7] Rules governing the reporting and dissemination of swaps are the subject of a separate rulemaking by the CFTC.

[8] The Commission and the CFTC solicited comments on the Market Data Roundtable. *See* Securities Exchange Act Release No. 62863 (September 8, 2010), 75 FR 55575 (September 13, 2010). Comments received by the Commission are available at *http://www.sec.gov/cgi-bin/ruling-comments?ruling=df-title-vii-real-time-reporting&rule_path=/comments/df-title-vii/real-time-reporting&file_num=DF%20Title%20VII%20-%20Real%20Time%20Reporting&action=Show_Form&title=Real-Time%20Reporting%20-%20Title%20VII%20Provisions%20of%20the%20Dodd-Frank%20Wall%20Street%20Reform%20and%20Consumer%20Protection%20Act.*

[9] *See http://www.sec.gov/spotlight/regreformcomments.shtml.*

[10] *See* SDR Registration Proposing Release, *supra* note 6.

[11] This analysis is based on a sample of dollar-quoted, gold record transactions submitted to the Depository Trust & Clearing Corporation ("DTCC") between August 1, 2009, and July 30, 2010.

[12] 15 U.S.C. 78c–3(e).

or (2) such other time after entering into the SBS as the Commission may prescribe by rule or regulation.

In addition, Section 13A(a)(1) of the Exchange Act [13] requires that each SBS that is not accepted for clearing by any clearing agency or derivatives clearing organization be reported to (1) an SDR, or (2) in the case in which there is no SDR that would accept such SBS, to the Commission, within such time period as the Commission may by rule or regulation prescribe. Section 13(m)(1)(G) of the Exchange Act [14] provides, further, that each SBS (whether cleared or uncleared) shall be reported to a registered SDR. Section 13(m)(1)(F) of the Exchange Act [15] states that the parties to a SBS, including agents of the parties to a SBS, shall be responsible for reporting SBS transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.[16]

Section 13(n)(4)(A)(i) of the Exchange Act [17] requires the Commission to prescribe standards that specify the data elements for each SBS that must be collected and maintained by each registered SDR. Further, Section 13(n)(4)(A)(ii) of the Exchange Act [18] requires the Commission, in carrying out Section 13(n)(4)(A)(i) of the Exchange Act, to prescribe consistent data element standards applicable to registered entities and reporting counterparties. Under Section 13(n)(5) of the Exchange Act, a registered SDR must, among other things, maintain the SBS data it collects in the form and manner prescribed by the Commission, provide the Commission or its designee with direct electronic access, and make SBS data available on a confidential basis, upon request, to certain regulatory authorities.[19]

[13] 15 U.S.C. 78m–1(a)(1).

[14] 15 U.S.C. 78m(1)(G).

[15] 15 U.S.C. 78m(m)(1)(F).

[16] In addition, Section 13A(a)(2) of the Exchange Act requires the Commission to adopt an interim final rule providing for the reporting of SBSs entered into before the date of enactment of the Dodd-Frank Act the terms of which had not expired as of that date. To satisfy this requirement, the Commission adopted Rule 13Aa–2T under the Exchange Act, an interim final temporary rule for the reporting of such SBSs. *See* Securities Exchange Act Release No. 63094 ("Interim Rule Release").

[17] 15 U.S.C. 78(n)(4)(A)(i).

[18] 15 U.S.C. 78(n)(4)(A)(ii).

[19] These responsibilities of registered SDRs under Section 13(n)(5) of the Exchange Act, 15 U.S.C. 78m(n)(5), will be the subject of a separate Commission rulemaking. *See* SDR Registration Proposing Release, *supra* note 6.

2. Security-Based Swap Dissemination Requirements

Section 13(m)(1)(B) of the Exchange Act [20] authorizes the Commission to make SBS transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery, subject to the general requirement in Section 13(m)(1)(C) of the Exchange Act [21] that all SBS transactions be subject to real-time public reporting. Section 13(m)(1)(C) authorizes the Commission to provide by rule for the public availability of SBS transaction, volume, and pricing data as follows:

(1) With respect to those SBSs that are subject to the mandatory clearing requirement described in Section 3C(a)(1) of the Exchange Act (including those SBSs that are excepted from the requirement pursuant to Section 3C(g) of the Exchange Act), the Commission shall require real-time public reporting for such transactions; [22]

(2) With respect to those SBSs that are not subject to the mandatory clearing requirement described in Section 3C(a)(1) of the Exchange Act, but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions;

(3) With respect to SBSs that are not cleared at a registered clearing agency and which are reported to a SDR or the Commission under Section 3C(a)(6),[23] the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person; and

(4) With respect to SBSs that are determined to be required to be cleared under Section 3C(b) of the Exchange Act but are not cleared, the Commission shall require real-time public reporting for such transactions.[24]

[20] 15 U.S.C. 78m(m)(1)(B).

[21] 15 U.S.C. 78m(m)(1)(C).

[22] Section 3C(a)(1) of the Exchange Act provides that it shall be unlawful for any person to engage in a SBS unless that person submits such SBS for clearing to a clearing agency that is registered under the Exchange Act or a clearing agency that is exempt from registration under the Exchange Act if the SBS is required to be cleared. Section 3C(g)(1) of the Exchange Act provides that requirements of Section 3C(a)(1) will not apply to a SBS if one of the counterparties to the SBS (1) is not a financial entity; (2) is using SBSs to hedge or mitigate commercial risk; and (3) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared SBSs.

[23] The reference in Section 13(m)(1)(C)(iii) of the Exchange Act to Section 3C(a)(6) of the Exchange Act is incorrect. Section 3C of the Exchange Act does not contain a paragraph (a)(6).

[24] Section 3C(b)(1) of the Exchange Act requires the Commission to review on an ongoing basis each SBS, or any group, category, type, or class of SBS to make a determination that such SBS, or group, category, type, or class of SBS should be required to be cleared.

Section 13(m)(1)(A) of the Exchange Act [25] states that the term "real-time public reporting" means to report data relating to a SBS transaction, including price and volume, as soon as technologically practicable after the time at which the SBS transaction has been executed.

With respect to SBSs that are subject to Sections 13(m)(1)(C)(i) and (ii) of the Exchange—*i.e.,* SBSs that are subject to the mandatory clearing requirement in Section 3C(a)(1) (including those SBSs that are not cleared pursuant to the exception in Section 3C(g)(1)) and SBSs that are not subject to the mandatory clearing requirement in Section 3C(a)(1) but are cleared—Section 13(m)(1)(E) of the Exchange Act [26] requires that the Commission's rule providing for the public availability of SBS transaction and pricing data contain provisions to: (1) Ensure that such information does not identify the participants; (2) specify the criteria for determining what constitutes a large notional SBS transaction (block trade) for particular markets and contracts; (3) specify the appropriate time delay for reporting large notional SBS transactions (block trades) to the public; and (4) that take into account whether public disclosure will materially reduce market liquidity.

Section 13(m)(1)(D) of the Exchange Act [27] authorizes the Commission to require registered entities [28] to publicly disseminate the SBS transaction and pricing data required to be reported under Section 13(m)(1) of the Exchange Act. In addition, Section 13(n)(5)(D)(ii) of the Exchange Act states that a registered SDR shall provide data "in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m)." [29]

II. Description of Proposed Rules

A. Overview

In general, proposed Regulation SBSR would provide for the reporting of three broad categories of SBS information: (1) Information that would be required to be reported to a registered SDR in real

[25] 15 U.S.C. 78m(m)(1)(A).

[26] 15 U.S.C. 78m(m)(1)(E).

[27] 15 U.S.C. 78m(m)(1)(D).

[28] The Exchange Act does not define the term "registered entity" or "registered entities." The Commission believes that the term "registered entities" in Sections 13(m)(1)(F) and 13(n)(4)(A)(ii) of the Exchange Act includes registered SDRs because SDRs are required to register with the Commission pursuant to Section 13(n) of the Exchange Act, 15 U.S.C. 78m(n).

[29] 15 U.S.C. 78m(n)(5)(D)(ii).

time and publicly disseminated;[30] (2) additional information that would be required to be reported to a registered SDR or, if there is no registered SDR that would receive such information, to the Commission, within specified timeframes, but that would not be publicly disseminated; and (3) information about "life cycle events", as defined in proposed Rule 900[31] and discussed below, that would be reported as a result of a change to information previously reported for a SBS. As described in greater detail below, proposed Regulation SBSR would identify the SBS transaction information that would be required to be reported, establish reporting obligations, and specify the timeframes for reporting and disseminating information.

In addition, proposed Regulation SBSR would require a registered SDR to publicly disseminate the SBS information that would be required to be reported in real time. Proposed Regulation SBSR also would require a registered SDR to register with the Commission as a securities information processor ("SIP") on existing Form SIP.

B. Who Must Report

Section 13(m)(1)(F) of the Exchange Act[32] provides that parties to a SBS (including agents of parties to a SBS) shall be responsible for reporting SBS transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission. Section 13A(a)(3) of the Exchange Act[33] specifies the party obligated to report SBSs that are not accepted by any clearing agency or derivative clearing organization. Proposed Rule 901(a) would specify which counterparty is the "reporting party" for a SBS, thereby implementing Sections 13(m)(1)(F) and 13A(a)(3) of the Exchange Act, as follows:

- With respect to a SBS in which only one counterparty is a security-based swap dealer ("SBS dealer") or major security-based swap participant ("major SBS participant"),[34] the SBS dealer or major SBS participant shall be the reporting party;
- With respect to a SBS in which one counterparty is a SBS dealer and the other counterparty is a major SBS participant, the SBS dealer shall be the reporting party; and
- With respect to any other SBS not described in the first two cases, the counterparties to the SBS shall select a counterparty to be the reporting party.

The Exchange Act, as modified by the Dodd-Frank Act, does not explicitly specify which counterparty should be the reporting party for those SBSs that are cleared by a clearing agency or derivative clearing organization. The Commission preliminarily believes that, for the sake of uniformity and ease of applicability, the duty to report a SBS should attach to the same counterparty regardless of whether the SBS is cleared or uncleared. In addition, the Commission preliminarily believes that SBS dealers and major SBS participants generally should have the responsibility to report SBS transactions, as they are more likely than other counterparties to have appropriate systems in place to facilitate reporting.

Accordingly, with respect to a SBS where both counterparties are U.S. persons,[35] proposed Rule 901(a) would assign reporting responsibilities as follows:

- With respect to a SBS in which only one counterparty is a SBS dealer or major SBS participant, the SBS dealer or major SBS participant would be the reporting party;
- With respect to a SBS in which one counterparty is a SBS dealer and the other counterparty is a major SBS participant, the SBS dealer would be the reporting party; and
- With respect to any other SBS not described in the first two cases, the counterparties to the SBS would select a counterparty to be the reporting party.

Proposed Rule 901(a)(1) would provide that, where only one counterparty to a SBS is a U.S. person, the U.S. person would be the reporting party. The Commission preliminarily believes that, where only one counterparty is a U.S. person, assigning the reporting duty to the counterparty that is a U.S. person would help to assure compliance with the reporting requirements of proposed Regulation SBSR.

In addition, it is possible that a SBS executed in the United States or through any means of interstate commerce, or that is cleared through a clearing agency having its principal place of business in the United States, could be executed between two counterparties neither of which is a U.S. person. Proposed Rule 901(a)(3) would provide that, if neither party is a U.S. person but the SBS is executed in the United States or through any means of interstate commerce, or is cleared through a clearing agency having its principal place of business in the United States,[36] the counterparties to the SBS would be required to select a counterparty to be the reporting party.[37]

To comply with the duty to report in real time itself, a reporting party likely would need to develop and maintain an internal order management system ("OMS") capable of capturing all relevant SBS data and sending it in real time. The Commission further believes that each reporting party likely would need to establish and maintain an appropriate compliance program and support for the operation of the OMS and reporting mechanism, which could include transaction verification and validation protocols, and necessary technical, administrative, and legal support. However, proposed Rule 901(a) would not prevent a reporting party to a SBS from entering into an agreement with a third party to report the transaction on behalf of the reporting party. For example, for a SBS executed on a security-based swap execution facility ("SB SEF")[38] or a national securities exchange, the SB SEF or national securities exchange could transmit a transaction report for the SBS to a registered SDR. By specifying the reporting party with the duty to report SBS information under proposed Regulation SBSR, the Commission does not intend to inhibit the development of commercial ventures to provide trade processing services to SBS counterparties. Nevertheless, a SBS counterparty that is a reporting party would retain the obligation to ensure

[30] *See* proposed Rule 900 (defining "real time" to mean, with respect to the reporting of SBS information, as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the SBS, and defining "time of execution" as the point at which the counterparties to a SBS become irrevocably bound under applicable law). *See also infra* Section III (discussing proposed rules relating to real-time public dissemination of SBS transaction information).

[31] Proposed Rule 900 would provide definitions of various terms used in proposed Regulation SBSR and further provide that terms that appear in Section 3 of the Exchange Act, 15 U.S.C. 78c, would have the same meaning as in Section 3 and the rules or regulations thereunder.

[32] 15 U.S.C. 78m(m)(1)(F).

[33] 15 U.S.C. 78m[A(a)(3)].

[34] *See* 15 U.S.C. 78c(a)(71) (defining "security-based swap dealer"); 15 U.S.C. 78c(a)(67) (defining "major security-based swap participant"). *See also supra* note 5.

[35] *See* proposed Rule 900 (defining "U.S. person" to mean a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of business in the United States). *See also infra* Section VIII (discussing application of proposed Regulation SBSR to cross-border SBS transactions).

[36] *See* proposed Rules 908(a)(2) and (3) and *infra* Section VIII.

[37] *See infra* Section VIII (discussing the requirements for the reporting of a SBS if the SBS is executed in the United States or through any means of interstate commerce, or is cleared through a registered clearing agency having its principal place of business in the United States).

[38] *See* 15 U.S.C. 78c(a)(77) (defining "security-based swap execution facility"). The registration and regulation of SB SEFs is the subject of a separate Commission rulemaking.

that information is provided to a registered SDR in the manner and form required by proposed Regulation SBSR, even if the reporting party has entered into an agreement with a third party to report on its behalf.[39]

Request for Comment

The Commission requests comment on all aspects of the proposal as to who would be responsible for reporting SBSs to a registered SDR.

1. Do any entities currently have the functionality to report SBSs, as proposed, to data repositories? If so, who? Do commenters think it is likely that entities other than SBS counterparties will develop the functionality to report SBSs to registered SDRs? If so, what are these entities and how will they operate?

2. Should the Commission *require* one or more entities other than a SBS counterparty, such as a registered SB SEF, a national securities exchange, a clearing agency, or a broker, to report SBSs? Or do commenters agree with the Commission's approach of assigning the responsibility to report to a counterparty, while allowing the counterparty to have an agent (such as a SB SEF) act on its behalf?

3. In practice, would reporting parties employ agents? Should the Commission encourage this?

4. Are the obligations assigned in proposed Rule 901(a) sufficiently clear?

5. For SBSs executed on a SB SEF or national securities exchange, would the counterparties to the SBS have the information necessary to know which counterparty would incur the reporting obligation? For example, for an anonymous SBS executed on a SB SEF and cleared by a clearing agency, would the counterparties know each other's identities? If not, what steps could they take to obtain enough information to be able to ascertain which party has the reporting obligation? Could the SB SEF provide that information to the counterparties? Alternatively, should the reporting obligation be assigned to the SB SEF or other trading venue?

6. In cases where counterparties would be required to select which counterparty would report the transaction, is additional Commission guidance likely to be necessary? Should the Commission adopt a default mechanism to allocate the reporting obligation in such cases? For example, if a SBS is between two SBS dealers, should the Commission mandate that the "seller" always have the responsibility for reporting?

7. Do commenters agree with the Commission's proposed approach for reporting for SBSs where only one counterparty is a U.S. person? If not, how should it be revised?

8. Do commenters agree with the Commission's proposed approach for reporting for SBSs where neither counterparty is a U.S. person? If not, how should it be revised?

9. To what extent would reporting parties have to obtain new or update existing OMSs and establish appropriate compliance programs to satisfy the real-time reporting obligations of proposed Rule 901(c)? Would current systems be able to handle this responsibility? Could current systems be upgraded or would they have to be replaced completely?

C. Where Information Is Reported

Proposed Rule 901(b) would require a reporting party to report the information required under proposed Regulation SBSR to a registered SDR or, if there is no registered SDR that would accept the information, to the Commission. The Commission believes that it would be very unlikely that there would be a situation where a reporting party would be required to report to the Commission rather than a registered SDR. Proposed Rule 13n–5(b)(1)(ii) under the Exchange Act would require a registered SDR that accepts reports for any SBS in a particular asset class to accept reports for all SBSs in that asset class.[40] Thus, a reporting party would not be able to report a SBS transaction to the Commission unless no registered SDR accepts transaction information for any SBS in the same asset class as the transaction. In addition, there currently exist entities that accept SBS transaction data in CDS and equity swaps that would likely be required to register as a SDR.

Request for Comment

10. Is the Commission's belief that it would be unlikely to have a situation where a reporting party must report to the Commission rather than a registered SDR reasonable?

11. Do commenters believe that there will be at least one registered SDR in each SBS asset class?

12. Are there any SBS asset classes for which there might not be a registered SDR?

III. Information To Be Reported in Real Time

A. Introduction

Proposed Rule 901 divides the SBS information that would be required to be reported into three broad categories: (1) Information that would be required to be reported in real time pursuant to proposed Rule 901(c)[41] and publicly disseminated pursuant to proposed Rule 902; (2) additional information that would be required to be reported (but not publicly disseminated) pursuant to proposed Rule 901(d)(1)[42] within the timeframes specified in proposed Rule 901(d)(2), which would vary depending on whether the transaction was executed and confirmed electronically or manually; and (3) life cycle event information that would be required to be reported under proposed Rule 901(e).[43]

The Commission notes that, although only the information specified in proposed Rule 901(c) would be required to be reported in real time, proposed Rule 901(c) would not prevent a reporting party from reporting some or all of the additional information required under proposed Rule 901(d)(1) at the same time that it reports the information required under proposed Rule 901(c). In other words, proposed Rule 901 would not mandate separate reports for the SBS information required under paragraphs (c) and (d) of proposed Rule 901; if a reporting party wished to provide all of the information required under proposed Rule 901 in a single transaction report, it would be free to do so—provided it could provide all of the information within the timeframe required by proposed Rule 901(c).

B. Categories of Information To Be Provided for Real-time Reporting

Proposed Rule 901(c) would set forth the categories of information pertaining to a SBS transaction that a reporting party would be required to report to a registered SDR in real time. For the reasons discussed below, the Commission preliminarily believes that the SBS information required to be reported under proposed Rule 901(c)—which the registered SDR would publicly disseminate pursuant to

[39] Thus, a reporting party would be liable for a violation of proposed Rule 901 if, for example, a SB SEF acting on the reporting party's behalf reported a SBS transaction to a registered SDR late or inaccurately.

[40] *See* SDR Registration Proposing Release, *supra* note 6.

[41] *See infra* Section III.B (discussing the categories of information to be provided for real-time reporting).

[42] *See infra* Section IV.B (discussing those data elements required under Rule 901(d)(1)).

[43] *See infra* Section IV.D (discussing the reporting of life cycle event information). A registered SDR would be required to adopt policies and procedures to determine, among other things, whether and how it would publicly disseminate reports of life cycle events. *See* proposed Rule 907(a)(4).

proposed Rule 902—would serve the objectives of Section 13(m) of the Exchange Act by enhancing price discovery in the SBS market.

The Commission recognizes that the SBS market involves complex instruments and that reporting conventions continue to evolve. Consequently, in developing proposed Rule 901, the Commission explored various alternative approaches, including mandating by rule an enumerated list of all specific data elements to be reported. The Commission believes that such a list likely would have to vary by asset class (*e.g.,* CDS and equity-based swaps), and would require further variations based on sub-asset type.[44] The Commission understands, based on discussion with industry participants, that between 50 and 100 or more separate data elements could be used to express a typical CDS.

A Commission rule that attempted to identify each data element for each SBS asset class or sub-asset type could be less flexible in responding to changes in the marketplace, including the introduction of new types of SBSs, because it would be necessary for the Commission to amend its rules each time it sought to require the reporting of additional or different data elements. Accordingly, rather than enumerating each data element for each SBS asset class or sub-asset type that would be required to be reported, proposed Rule 901(c) would instead specify the categories of information that would be required to be reported for each SBS transaction. Furthermore, proposed Rule 907, discussed more fully below, would require each registered SDR to establish, maintain, and make publicly available policies and procedures that, among other things, specify the data elements of a SBS (or a life cycle event) that a reporting party would be required to report. These data elements would be required to include, at a minimum, the data elements required under proposed Rule 901(c) (for information that will be publicly disseminated) and proposed Rule 901(d) (for non-disseminated regulatory information). The Commission preliminarily believes that proposed Rule 901(c), together with these policies and procedures, would promote the reporting of uniform, material information for each SBS, while providing flexibility to account for changes to the SBS market over time.

The Commission discusses below the SBS data that would be required to be reported in real time, and which would be publicly disseminated.

1. Asset Class

Proposed Rule 901(c)(1) would require the reporting party to report the asset class of the SBS and, if the SBS is an equity derivative, whether the SBS is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the SBS is based. Proposed Rule 900 would define "asset class" to mean those SBSs in a particular broad category, including, but not limited to, credit derivatives, equity derivatives, and loan-based derivatives. The Commission believes that identifying the asset class would provide market participants with basic information about the SBS transaction to identify the type of SBS being publicly reported. In addition, requiring the reporting party to indicate whether the SBS is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the SBS is based would enable a registered SDR to know if the SBS was excluded from being a block trade.[45]

2. Date and Time of Execution

Proposed Rule 901(c)(4) would require the reporting party to report the date and time, to the second, of execution of a SBS, so that prices of transactions that are disseminated in real time can be properly ordered, and so the Commission can have a detailed record of when any given SBS was executed. In the absence of this information, market participants and regulators would not know whether transaction reports they are seeing reflect the current state of the market.

The Commission preliminarily believes that the time at which the SBS transaction has been executed should be the point at which the counterparties to a SBS become irrevocably bound under applicable law.[46] For example, in the context of SBSs, an oral agreement over the phone will create an enforceable contract, and the time of execution would be deemed to be the time that the parties to the telephone call agree to the material terms.[47] The Commission recognizes that trades agreed to over the phone would need to be systematized for purposes of fulfilling this reporting requirement (as well as real-time reporting of other data elements) by being entered in an electronic system that assigns a time stamp. The Commission believes that it is consistent with Congress' intent for orally negotiated SBS transactions to be systematized as quickly as possible so that they could be publicly disseminated using electronic means.[48]

The Commission is proposing that the date and time of execution be expressed using Coordinated Universal Time ("UTC"), a slight variation on Greenwich Mean Time.[49] SBSs are traded globally, and the Commission expects that many SBSs subject to these reporting and dissemination rules would be executed between counterparties in different time zones. In the absence of a uniform standard, it might not be clear whether the date and time of execution were being expressed from the standpoint of the time zone of the first counterparty, the second counterparty, or the registered SDR itself. Mandating a common standard for expressing date and time is designed to alleviate any potential confusion on the part of registered SDRs, counterparties, other market participants, and the public as to when the SBS was executed. The Commission believes that UTC is an appropriate and well known standard

[44] For example, the following types of CDS could each require a different list of data elements: Single-name CDS, index CDS, loan CDS, and CDS on asset-backed securities.

[45] *See* proposed Rule 907(b)(4)(ii).

[46] *See* proposed Rule 900. Section 13(m)(1)(A) of the Exchange Act defines "real time" in relation to the "execution" of the SBS, not when it is confirmed or cleared.

[47] The Dodd-Frank Act amends the definition of "security" under the Securities Act and Exchange Act to explicitly include SBSs, and the execution of the transaction will be the sale for purposes of the federal securities laws. *See* Securities Act Release No. 3591 (July 19, 2005), 70 FR 44722 (August 3, 2005), notes 391 and 394 (explaining when a sale occurs under the Securities Act).

[48] The Senate Report accompanying the Dodd-Frank Act indicates that "[m]arket participants—including exchanges, contract markets, brokers, clearing houses and clearing agencies–were consulted and affirmed that the existing communications and data infrastructure for the swaps markets could accommodate real time swap transaction and price reporting." The Senate Report stated, further, that real time swap transaction and price reporting would narrow swap bid/ask spreads, make for a more efficient swaps market and benefit consumers and counterparties overall. *See* 156 Cong. Rep. S5921 (July 15, 2010). In light of this acknowledgement of the benefits of real-time SBS transaction and price reporting, and the apparent feasibility of such reporting, the Commission believes that Congress intended for orally negotiated SBS transactions to be systematized as quickly as possible and reported in real time.

[49] The generally acknowledged acronym for Coordinated Universal Time is "UTC," rather than "CUT." The International Telecommunication Union, an agency of the United Nations that oversees information and communication technology issues, wanted Coordinated Universal Time to have the same symbol in all languages. English and French speakers wanted the initials of both their respective language's terms to be used internationally: "CUT" for "coordinated universal time" and "TUC" for "temps universel coordonné." This resulted in the final compromise of "UTC." *See http://www.nist.gov/physlab/div847/utenist.cfm#cut.*

suitable for purposes of reporting the time of execution of SBSs.

3. Price

Proposed Rule 901(c)(7) would require the reporting of the price of a SBS transaction, expressed in terms of the commercial conventions used in that asset class.[50] The Commission recognizes that the price of a SBS generally would not be a simple number, as with stocks, but would be expressed in terms of the quoting conventions for that SBS. For example, a CDS may be quoted in terms of the economic spread—which is variously referred to as the "traded spread," "quote spread," or "composite spread"—expressed as a number of basis points per annum. Alternately, CDS can be quoted in terms of prices representing a discount or premium over par. In contrast, an equity or loan total return swap may be quoted in terms of a LIBOR-based floating rate payment, expressed as a floating rate plus a fixed number of basis points.

The Commission preliminarily believes that, because these quoting conventions are widely used and understood by SBS market participants, requiring the price of a SBS to be reported in terms of one of these existing quoting conventions would be consistent with the mandate in Section 13(m)(1)(B) of the Exchange Act to enhance price discovery. As discussed further below, however, proposed Rule 907(a)(1) would require a registered SDR to establish, maintain, and make publicly available policies and procedures that specify the data elements of a SBS that a reporting party must report, which would include the elements that constitute the price. The Commission preliminarily believes that, because of the many different conventions that exist to express the price in various SBS markets and the new conventions that might arise in the future, some flexibility should be given to registered SDRs to select appropriate conventions for denoting the price of different asset classes of SBSs.

4. Other Terms of the SBS

Proposed Rule 901(c) would require the reporting of, among other things, information that identifies the SBS instrument[51] and the specific asset(s) or issuer(s) of a security or indexes on which the SBS is based; the notional amount(s) of the SBS and the currenc(ies) in which the notional amount(s) is expressed; the effective date of the SBS; the scheduled termination date of the SBS; and the terms of any fixed or floating rate payments and the frequency of any payments. The Commission preliminarily believes that this information is fundamental to understanding the SBS transaction being publicly reported, and that a SBS transaction report that lacked such information would not be meaningful.

For example, some types of SBSs are contractual agreements that generally involve the periodic exchange of cash flows from specified assets over a defined time period. These cash flows are based on the notional amount(s) of the SBS—*i.e.,* the notional principal(s) of the SBS is used to calculate the periodic payments made under the agreement. Accordingly, information that identifies the asset(s), including a narrow-based index, or issuer(s) of the security or securities on which a SBS is based, the notional amount(s) of the SBS (including the currenc(ies) in which it is expressed), the effective date, and the scheduled termination date of that SBS are fundamental elements of the transaction that would enhance price discovery.[52]

The Commission anticipates that, for at least some standardized instruments, conventions about how a SBS instrument is referred to can become so well known that certain terms of the underlying contract can be assumed, and thus would not need to be specifically provided pursuant to other provisions of proposed Rule 901(c).

5. Whether the SBS Will Be Cleared by a Clearing Agency

Proposed Rule 901(c)(9) would require the reporting party to indicate whether or not the SBS will be cleared by a clearing agency. This factor can impact the price of the SBS. If a SBS is not cleared, one counterparty might charge a higher price to do the trade because of the counterparty credit risk it would incur (which might be significantly diminished if the SBS were centrally cleared). Because the use of a clearing agency to clear a SBS would thus impact price, knowing whether a SBS will be cleared should provide market participants with additional information that would be useful in assessing the reported price for a SBS, thus enhancing price discovery. Therefore, the Commission is proposing to require that this data element be reported in real time and publicly disseminated.

6. Indication That a Transaction Is Between Two SBS Dealers

Proposed Rule 901(c)(10) would require the reporting party to indicate if both counterparties to the SBS are SBS dealers. The Commission preliminarily believes that such an indication would enhance market transparency and provide more accurate information about the pricing of the SBS transaction, and thus about trading activity in the SBS market. Prices of transactions involving a dealer and non-dealer are typically "all-in" prices that include a mark-up or mark-down, while interdealer transaction prices typically do not. Thus, the Commission believes that requiring an indication of whether a SBS was an interdealer transaction or a transaction between a dealer and a non-dealer counterparty would enhance transparency by allowing market participants to more accurately assess the reported price for a SBS.

7. If Applicable, an Indication That the SBS Transaction Does Not Accurately Reflect the Market

In some instances, a SBS transaction might not reflect the current state of the market. Thus, publicly disseminating a report of that transaction without an indication to that effect could mislead market participants and other observers. The Commission does not expect that a registered SDR would be able to identify such cases. Therefore, proposed Rule 901(c)(11) would require the reporting party to alert the registered SDR in such cases. This could occur, for example, if the reporting party were reporting the transaction late (*i.e.,* over 15 minutes after the time of execution). An aged transaction by definition no longer represents the current state of the market, and a reporting party would therefore be required to indicate that the

[50] One commenter identified the traded price as one of the elements that should be included in a SBS transaction report. *See* letter from James W. Toffey, Chief Executive Officer, Benchmark Solutions, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated October 1, 2010 ("Benchmark Letter") at 2.

[51] *See* proposed Rule 900 (defining "security-based swap instrument" to mean each SBS in the same asset class, with the same underlying reference asset, reference issuer, or reference index).

[52] One commenter believed that a SBS transaction report should include: (1) The traded price and execution time; (2) the counterparty type, including a designation for an "end user;" (3) the notional size of the transaction; and (4) contract "open interest." *See* Benchmark Letter at 2. In addition, the commenter believed that the reference data for a SBS must include "standard attributes necessary to derive cash flows and any contingent claims that can alter or terminate payments" of the SBS. *See id.* at 1. As described above, the proposed rules would require the real-time reporting of price and time of execution, notional size, and an indication of whether a SBS is between two dealers. The proposed rules would not require the reporting of "open interest." However, another Commission rulemaking will provide regulators with the ability to monitor open SBS positions. *See* SDR Registration Proposing Release, *supra* note 6.

transaction is being reported late.[53] Other situations where this could occur are inter-affiliate transfers and assignments where the new counterparty has no opportunity to negotiate the terms, including the price, of taking on the position. In such cases, there might not be an arm's length negotiation over the terms of the SBS transaction, and disseminating a report of the transaction report without noting that fact would be inimical to price discovery. Accordingly, the Commission preliminarily believes that a reporting party must note such circumstances in its real-time transaction report to a registered SDR.

The Commission further notes that a registered SDR would be required to have policies and procedures that, among other things, describe how reporting parties shall report SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market.[54] The Commission expects that these policies and procedures would require, among other things, different indicators being applied in different situations.

8. Indication for Customized Trades

Proposed Rule 901(c)(12) would provide that the reporting party must indicate if the SBS is customized to the extent that the other information provided pursuant to proposed Rule 901(c) does not provide all of the material information necessary to identify such customized SBS or does not contain the data elements necessary to calculate the price of the SBS. The Commission believes that reporting highly customized SBS in this manner would promote transparency by providing market participants with knowledge of the transaction in a given asset class and on certain reference securities or issuers while, at the same time, making clear that the reported data elements would not, and would not be required to, provide sufficient information to fully understand all aspects of the customized transaction. The Commission preliminarily believes that requiring public dissemination of more detailed information about customized SBSs would be of limited utility in facilitating price discovery because of the unique nature of such transactions.

Request for Comment

The Commission requests comment generally on all aspects of the categories of information that would be required to be reported in real time for public dissemination.

13. Do commenters agree with the proposed categories of information that would be required to be reported in real time for public dissemination? If not, what additional specific categories of information should be required to be reported in real time for public dissemination, and why? How would public dissemination of such additional information enhance price discovery or market liquidity?

14. What categories of information, if any, should not be required to be reported in real time for public dissemination, and why? Would the public dissemination of certain information materially reduce market liquidity? If so, how, specifically, would dissemination of the particular information affect liquidity? Please supply data to support your answer.

15. Does proposed Rule 901(c) provide adequate guidance with respect to the information that must be reported? If not, what additional guidance do commenters believe is necessary?

16. Would the real-time dissemination of the categories of information specified in proposed Rule 901(c) serve the objectives of Section 13(m) of the Exchange Act by enhancing price discovery in the SBS market? If so, how? Would disclosure of certain categories of information not further price discovery? If so, why not? Please provide examples.

17. Is it necessary to require dissemination of the date of execution, unless it is a date other than the current date?

18. Do commenters agree that it would be feasible to require SBSs agreed to by phone to be entered into an electronic system that assigns a time stamp? Why or why not?

19. Do commenters agree that the time of execution should be reported to the second? Why or why not? Should it be reported in a finer increment?

20. Would requiring the reporting and dissemination of price in terms of the existing quoting conventions provide adequate information regarding the price of a SBS? Where more than one quoting or pricing convention exists within an asset class, what convention should be used? Should proposed Regulation SBSR require specific conventions to be used?

21. Are there specific data elements that should be required to be reported to help understand the price of a SBS? If so, what are they, and do they vary by asset class? Or by some further categorization?

22. Are there categories of SBSs that do not have an existing quoting convention? If so, how should "price" be expressed for those SBSs? What data elements should be required to be reported and disseminated to capture the price of such SBSs?

23. Would information regarding whether a SBS is cleared impact the price of the SBS? If not, why not? Would the reporting party in all cases know whether the SBS transaction will be cleared?

24. Would information concerning whether a SBS is a transaction between two SBS dealers enhance transparency and provide more accurate information about the pricing of the SBS? If not, why not?

25. In a SBS executed on a SB SEF or national securities exchange, would a counterparty know in real time the category of its counterparty, *e.g.,* whether its counterparty is a SBS dealer, a major SBS participant, or not?

26. Do commenters agree that it would be appropriate for reporting parties to report whether a SBS transaction accurately reflects the market? How should such "off-market" transactions be defined? Could public dissemination of potential off-market transactions (*e.g.,* related to portfolio compressions) make it more difficult for market participants to understand and analyze market pricing?

27. Do commenters agree with the proposed approach for real-time reporting and public dissemination with respect to customized SBSs? Should the Commission require that additional information be reported and publicly disseminated for these SBSs? How practical would it be to report and publicly disseminate sufficient details about a customized SBSs in real time? Is there sufficient agreement over which SBSs should be considered customized for this purpose or is additional guidance needed? Is there a risk that this rule could be applied inconsistently by counterparties or across asset classes? Would public dissemination of information concerning customized SBSs materially reduce market liquidity? If so, why?

28. Would real-time transaction reports of customized SBSs have price discovery value? If so, in what way and how much? If not, why not? Would price discovery be enhanced by

[53] The registered SDR could deduce that a transaction has been reported late by looking to the time of execution, a data element required to be reported by proposed Rule 901(c)(4). However, if a registered SDR received a transaction report submitted with an anomalous time stamp, the registered SDR might not know whether the time stamp was correct and the trade was reported late, or whether the trade was reported in a timely fashion but the time stamp was inaccurate. Supplementing the time stamp with a "late" indicator would confirm to the registered SDR that the transaction was in fact being reported late.

[54] *See* proposed Rule 907(a)(4); *infra* Section VI.A.

requiring public dissemination of additional details of a customized SBS at a later time? If so, what additional details of the transaction should be publicly disseminated, and when?

29. Would any of the data elements specified in proposed Rule 901(c), if reported in real time, reveal the trading strategies or positions of any person? If so, how?

30. What do commenters believe would be the costs of reporting and publicly disseminating the proposed categories of information for SBSs? Or the benefits? Please be specific in your responses, and quantify your answers to the extent possible.

C. Definition of Real Time

Proposed Rule 900 would define "real time" to mean, with respect to the reporting of SBS transaction information, "as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the SBS transaction." [55] The Commission preliminarily believes that this proposed definition of "real-time" reporting is consistent with Sections 13(m)(1)(A) and (B) of the Exchange Act and technologically practicable in light of current industry practice.[56] Based on its discussions with market participants, the Commission understands that much of the infrastructure necessary to support real-time reporting to a registered SDR may already be in place.[57] The Commission understands, further, that the SBS market is almost entirely institutional, and large institutions have in place the systems and processes necessary to support trading and risk management of complex structured products. In many cases, trade details will already be systematized and little or no manual intervention would be necessary to aggregate or send the transaction data. In such cases, where it is technologically practicable for a reporting party to report the SBS transaction information required by proposed Rule 901(c) in one second, then it would be required to report the SBS transaction to a registered SDR in one second.

The Commission recognizes that, in other cases, a SBS transaction might be negotiated orally, and some manual data entry might be necessary before a transaction report could be sent. At the same time, however, the Commission believes it is appropriate to encourage market participants to take steps to minimize manual handling of such transactions, because the Dodd-Frank Act requires price and volume information of all SBS transactions to be disseminated publicly as soon as technologically practicable after the time of execution. Furthermore, the Commission notes that real-time reporting under proposed Rule 901(c) would require only certain elements of the trade to be systematized and reported, not all of the data elements that are required for full regulatory reporting under proposed Rule 901(d). The Commission is, therefore, proposing a 15-minute outer boundary for real-time public reporting of the data elements specified in proposed Rule 901(c) following the SBS's time of execution.[58]

Under the proposed approach, a reporting party would not be permitted to delay submission of a transaction report required by proposed Rule 901(c) while preparing the information necessary to provide a transaction report under proposed Rule 901(d), even if the reporting party could prepare the latter in under 15 minutes. Assume, for example, that two counterparties execute a SBS on an electronic trading platform, which permits the collection and transmission of all information required by proposed Rule 901(c) in one second, and all other details of the SBS can be confirmed in eight minutes. The reporting party would not be permitted to wait eight minutes to send a single transaction report containing the information required under proposed Rules 901(c) and (d) to a registered SDR. Instead, the reporting party would be required to send the information required by proposed Rule 901(c) in one second—because one second in this example is as soon as technologically practicable—and to send the information required by proposed Rule 901(d) in eight minutes. The Commission preliminarily believes that this approach is most conducive to price discovery. Collecting data elements that have less bearing on price discovery (such as those required by proposed Rule 901(d)) should not slow down the public dissemination of data elements that would facilitate price discovery (*i.e.,* those required by proposed Rule 901(c)).

Request for Comment

31. Do commenters agree with the proposed definition of "real time"? Would it be technologically practicable in all cases to report the information that would be required under proposed Rule 901(c) within 15 minutes? If not, why not? Would it be technologically practicable for some, but not all, SBSs? Or some, but not all, of the data elements? If so, what are the differentiating factors?

32. Should the Commission require shorter reporting time frames for certain SBS transactions? For example, should electronically executed SBSs be

[55] *See supra* note 30 (noting that the "time of execution" would mean the point at which the counterparties to a SBS become irrevocably bound under applicable law).

[56] The Commission notes, in addition, that the Senate report accompanying the Dodd-Frank Act indicates that "[m]arket participants—including exchanges, contract markets, brokers, clearing houses and clearing agencies—were consulted and affirmed that the existing communications and data infrastructure for the swaps markets could accommodate real time swap transaction and price reporting." *See* 156 Cong. Rec. S5921 (July 15, 2010).

[57] *See, e.g.,* CFTC and SEC, Public Roundtable to Discuss Swap Data, Swap Data Repositories, and Real Time Reporting, transcript available at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf,* comments of Sean Bernardo, Managing Director of Tullett Prebon Americas Corp. and representing the Wholesale Market Brokers Association, at 297 ("From the brokers' perspective, however you tell us to send those [transactions] straight to you, whatever the time frame is, we're able to do that, whether it's done voice, whether it's done electronic, or whether it's done hybrid"), and at 310 ("From the brokers' perspective, we already have these systems in place for 99 percent of these products already in some way, shape, or form. So, as far as upgrading them, we're upgrading the systems on a regular basis. So, I think, again, we can accommodate the needs that you have, and we currently do a lot of the reporting and * * * processing with the firms").

[58] One commenter believed that SBS transaction reports should be disseminated to the market within five minutes of execution, or as soon as technologically feasible. *See* Benchmark Letter at 2. The commenter noted that "the sooner post trade data is accessible to the market, the more effectively it can feed back into the update cycle of pre-trade information. Better pre-trade information allows investors to make more well-informed decisions regarding market values, risk and helps assure that investors achieve best execution." *Id.* Another commenter argued that "voice/hybrid execution systems" should have the same reporting timeframes as venues that execute electronically, because "a bifurcated requirement could result in an inaccurate trade tape confusing the market and regulator alike," and because "such a bifurcation might also create a 'race to the slowest' * * * as certain market participants, seeking to shroud their trading, favor slower reporting SEF's with their business over more efficient and transparent counterparts." *See* letter from James Cawley, CEO, Javelin Capital Markets, to SEC and CFTC (October 20, 2010) ("Javelin Letter") at 2. The Commission further notes that the Financial Industry Regulatory Authority ("FINRA") requires its members to report transactions in corporate and agency debt securities to FINRA's Transaction Reporting and Compliance Engine ("TRACE") within 15 minutes of the time of execution. *See* FINRA Rule 6730(a). For purposes of TRACE reporting, the time of execution generally means the time when the parties to the trade agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. *See* FINRA Rule 6710(d). FINRA has indicated that, based on 2009 figures, approximately 98% of corporate bond trades were reported within 15 minutes, 96% within ten minutes, and 92% within five minutes. *See* e-mail from Steve Joachim, Executive Vice President for Transparency Services, FINRA, to Michael Gaw, Assistant Director, Division of Trading and Markets, Commission (November 17, 2010).

reported as soon as technologically practical but in any event no later than 5 seconds? 30 seconds? Some other period? What should that period be, and why?

33. Should the Commission require longer reporting time frames for orally executed SBS transactions (such as 30 minutes)? If so, what should that longer period be, and why?

34. If there were a longer reporting time frame for orally executed SBSs, would the potential benefits of real-time public reporting be compromised? If so, how? If not, why not? Would this create an incentive for market participants to prefer oral negotiation of SBSs to delay real-time reporting of their transactions?

35. In the context of real-time reporting of SBS transactions, what is "technologically practicable"? Should the Commission define that term specifically? What systems and processes would be necessary to report orally concluded SBSs as soon as technologically practicable? Does this imply a requirement that all such SBSs must be immediately systematized?

36. What do commenters believe would be the costs of reporting the proposed data elements within 15 minutes? What would be the benefits? Please be specific in your response, and quantify the costs and benefits to the extent possible.

IV. Additional Reporting of Regulatory Information

A. Introduction

Proposed Rule 901(d) would require the reporting, within specified timeframes, of certain SBS transaction information that would not be publicly disseminated, in addition to the information required to be reported in real time pursuant to proposed Rule 901(c) that would be publicly disseminated. The Commission believes that the information that would be reported pursuant to proposed Rule 901(d) would facilitate regulatory oversight and monitoring of the SBS market by providing comprehensive information regarding SBS transactions and trading activity.[59] The Commission believes, further, that this information would assist the Commission in detecting and investigating fraud and trading abuses in the SBS market.

B. Data Elements Required Under Proposed Rule 901(d)

The data elements that would be required to be reported by the reporting party for each SBS pursuant to proposed Rule 901(d) are discussed below.

1. Unique Identifiers

Proposed Rule 901(d) would require the reporting of a participant ID of each counterparty and, as applicable, the broker ID, desk ID, and trader ID of the reporting party. The Commission preliminarily believes that reporting of this information would help promote effective oversight, enforcement, and surveillance of the SBS market by the Commission and other regulators. For example, activity could be tracked by a particular participant, a particular desk, or a particular trader. Regulators could observe patterns and connections in trading activity, or examine whether a trader had engaged in questionable activity across different SBS instruments. These identifiers also would facilitate aggregation and monitoring of the positions of SBS counterparties, which could be of significant benefit for systemic risk management.

The Commission understands that some efforts have been undertaken—in both the private and public sectors, both domestically and internationally—to establish a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally. Such a system could be of significant benefit to regulators worldwide, as each market participant could readily be identified using a single reference code regardless of the jurisdiction or product market in which the market participant was engaging. Such a system also could be of significant benefit to the private sector, as market participants would have a common identification system for all counterparties and reference entities, and would no longer have to use multiple identification systems. The enactment of the Dodd-Frank Act and the establishment of a comprehensive system for reporting and dissemination of SBSs—and for reporting and dissemination of swaps, under the jurisdiction of the CFTC—offer a unique opportunity to facilitate the establishment of a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally.[60]

The Commission preliminarily believes that a registered SDR must have a systematic means to identify and track all products and all persons involved in SBS transactions captured and recorded by the registered SDR. Therefore, the Commission is requiring that a "unique identification code" ("UIC") be assigned to each such product or person (or unit thereof, such as a branch or desk of a financial institution). Thus, under proposed Regulation SBSR, the "participant ID" would mean the UIC assigned to a participant.[61] "Broker ID" would be defined as the UIC assigned to an entity acting as a broker for a participant. "Desk ID" would be defined as the UIC assigned to the trading desk of a participant or of a broker of a participant, and "trader ID" would be defined as the UIC assigned to a natural person who executes SBSs.

Under the definition of "unique identification code" in proposed Rule 900, a UIC would have to be assigned by or on behalf of an internationally recognized standards-setting body ("IRSB") that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory. The Commission seeks to avoid requiring market participants to participate in a system that would require them to pay unreasonable fees, or that would permit discrimination among potential users of the system. Thus, the definition of "UIC" would further provide that, if no standards-setting body meets these criteria, a

[59] To the extent the Commission receives information that is reported under proposed Rule 901(d), such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

[60] One commenter believes that a single source of reference data and a standard set of unique identifiers must be used across the industry (*i.e.,* SB SEFs and SDRs) to ensure the comparability of similar contracts. The commenter urged the Commission to work with the industry to standardize terms and definitions of all reference data components and establish a single master reference data source. *See* Benchmark Letter at 1. *See also* Neal S. Wolin, Deputy Secretary of the Treasury, Remarks at Georgetown University McDonough School of Business (October 25, 2010), available at *http://www.treas.gov/press/releases/tg923.htm* (stating that the Office of Financial Research ("OFR") "is working with regulators and industry, laying the groundwork to standardize financial reporting and develop reference data that will identify and describe financial contracts and institutions. Data standardization will provide for more consistent and complete reporting, making the data available to decision makers easier to obtain, digest, and utilize. Over the coming weeks and months, the OFR will begin to define a set of standards for reporting of financial transaction and position data. The OFR will collaborate with the financial industry, data experts, and regulators to develop an approach to standardization that works for everyone").

[61] "Participant" would be defined as: (1) a U.S. person that is a counterparty to a SBS that is required to be reported to a registered SDR; or (2) a non-U.S. person that is a counterparty to a SBS that is (i) required to be reported to a registered SDR; and (ii) executed in the United States or through any means of interstate commerce, or cleared through a clearing agency having its principal place of business in the United States. *See* proposed Rule 900.

registered SDR would be required to assign all necessary UICs using its own methodology.

The Commission preliminarily believes that, if an IRSB meets these criteria, the UICs employed by a registered SDR must come from the IRSB, and participants of that registered SDR must take necessary steps to obtain UICs from that IRSB. However, it could take an extended period for an IRSB to assign, or establish protocols for assigning, UICs for all entities participating in the SBS market. A registered SDR would be required to use the UICs available from the IRSB's system, while using its own methodology to assign the rest. In addition, the definition of "UIC" would provide that, if a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, a registered security-based swap data repository would be required to assign a UIC to that person, unit of a person, or product using its own methodology.

The proposed definition of "UIC" would not require that a UIC be assigned "by" a IRSB itself. Rather, the proposed definition would provide only that the UIC be assigned "by or on behalf of" the IRSB. This is designed to preserve flexibility in how UICs may be assigned. An IRSB might establish the general protocols under which UICs are assigned, while another entity operating as an agent on behalf of the IRSB might assign the UICs pursuant to the protocols established by the IRSB. The proposed definition would allow for that possibility.

2. Other Terms of the SBS

Proposed Rule 901(d) would require identification of the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each counterparty to the other;[62] the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement; and the data elements necessary to calculate the market value of a transaction.[63] In addition, for a SBS that is not cleared, proposed Rule 901(d) would require a description of the settlement terms, including whether the SBS is cash-settled or physically settled, and the method for determining the settlement value.[64]

The Commission believes that each of these data elements would facilitate regulatory oversight of counterparties and the SBS market generally by providing information concerning counterparty obligations and risk exposures. For example, the reporting of data elements necessary to calculate the market value of a transaction would allow regulators to value an entity's SBS positions and calculate the exposure resulting from those positions. The Commission understands, based on discussions with industry participants, that market participants currently provide this information regarding SBSs to data repositories.

3. Clearing Information

Proposed Rule 901(d) would require the reporting of the name of the clearing agency, if the SBS is cleared. The Commission believes that the identity of the clearing agency that cleared a SBS is fundamental information regarding a cleared SBS. This information would allow regulators to verify, if necessary, that a SBS was cleared, and to easily identify the clearing agency that cleared the transaction.

Proposed Rule 901(d) also would require the reporting party to report, if the SBS is not cleared, whether the exception provided in Section 3C(g) of the Exchange Act was invoked. Section 3C(g)(1) of the Exchange Act provides that the requirements of Section 3C(a)(1) will not apply to a SBS if one of the counterparties to the SBS: (1) Is not a financial entity; (2) is using SBSs to hedge or mitigate commercial risk; and (3) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared SBSs. The application of the clearing exception in Section 3C(g)(1) of the Exchange Act is solely at the discretion of the SBS counterparty that satisfies these conditions.[65] Section 3C(g)(6) of the Exchange Act[66] authorizes the Commission, among other things, to request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in Section 3C(g) of the Exchange Act. The Commission believes that information regarding whether the exception in Section 3C(g)(1) was invoked for a non-cleared SBS would assist the Commission in overseeing and monitoring the use of the exception. This information would be a necessary preliminary step in determining whether the exception was properly invoked.[67]

4. Execution Venue

Proposed Rule 901(d) would require the reporting party to report the venue where the SBS was executed, or whether the SBS was executed bilaterally in the OTC market. The venue where a SBS is executed is necessary for investigating any potential improper behavior relating to the transaction. For example, regulators investigating a suspected abuse or other impropriety would need to know the execution venue in order to obtain records from the venue to assist in their investigation.

Request for Comment

The Commission requests comment on all aspects of the proposed additional information that would be required to be reported pursuant to proposed Rule 901(d).

37. Do commenters agree with the information that the Commission has proposed to be required to be reported pursuant to proposed Rule 901(d)? Should additional information be reported? If so, what information, and why?

38. Are there any data elements proposed to be reported that commenters believe should not be reported? If so, why not?

39. Should proposed Rule 901(d) also require reporting of the purpose of the SBS transaction (such as market making, directional trade, or asset hedge)? If so, what categories of purposes should be established, and why?

40. Is it possible that inconsistencies in pricing conventions among SBS market participants could result in uninformative prices being reported to a registered SDR? Could a reporting party use variation in pricing conventions to obscure pricing information? Do commenters believe that proposed Regulation SBSR should prescribe the

[62] For example, this would include, for a CDS, an indication of the counterparty purchasing protection and the counterparty selling protection, and the terms and contingencies of their payments to each other; and for other SBSs, an indication of which counterparty is long and which is short. This information could be useful to regulators in investigating suspicious trading activity.

[63] The Commission believes that these elements would include, for a SBS that is not cleared, information related to the provision of collateral, such as the title and date of the relevant collateral agreement.

[64] One commenter believed that a SBS transaction report should include information necessary to derive cash flows and any contingent claims that could alter or terminate payments of the SBS. *See* Benchmark Letter at 1. This is similar to the information required by proposed Rule 901(d)(1)(iii).

[65] *See* 15 U.S.C. 78c[C(g)(2)].

[66] 15 U.S.C. 78c[C(g)(6)].

[67] The use of this exception, and further information required to be reported regarding this exception, will be the subject of another Commission rulemaking. Any comments regarding this exception should be submitted in connection with that proposal.

specific pricing conventions that should be used?

41. Does proposed Rule 901(d) provide adequate guidance with respect to the information that must be reported?

42. Do commenters agree that the information described above regarding the material terms of a SBS would be useful for monitoring risk exposure and for other regulatory purposes? Why or why not?

43. Would it be difficult or cost prohibitive for reporting parties to report such information? If so, why?

44. Do SBS counterparties employ transaction-level collateral arrangements? If so, what specific information on transaction-level collateral information should be reported to a registered SDR?

45. Do commenters agree that the participant ID of each counterparty, and, as applicable, the broker ID, desk ID, and trader ID of the reporting party or its broker would be useful information to be reported? Why or why not? Would these identifiers be helpful for conducting regulatory oversight, including measuring risk exposure? How costly would it be for participants to report this information for each SBS?

46. Are there other entities that may play some part in the execution or reporting of a SBS transaction? If so, what are they? Should their identification information be reported to a registered SDR?

47. Are there additional subunits of a legal person, besides the desk, that should be identified by a UIC? If so, what are those subunits and how should they be defined?

48. Would the reporting party be in a position to know, in all cases, the participant ID of its counterparty? If a SBS is executed on a SB SEF, would the SB SEF be able to provide the reporting party the participant ID of the counterparty? If not, what alternative would be available to have this information reported?

49. Does an IRSB currently exist or will one exist in the near future that could carry out the functions envisioned by proposed Regulation SBSR? What additional steps would need to be taken for that entity to carry out these functions?

50. Who would own the intellectual property underlying the UICs assigned by or on behalf of an IRSB? Would a registered SDR have to pay fees to obtain UICs from an IRSB? If so, how much? What usage restrictions might the owners of the relevant intellectual property impose on registered SDRs or on consumers of the market data feed? Are any fees and usage restrictions imposed by an IRSB (or any entity that might become an IRSB) fair and reasonable and not unreasonably discriminatory? If not, in what way are they not?

51. Are there any issues that could result from the Commission requiring that UICs only be assigned by or on behalf of an IRSB that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory? Would imposing such a standard allow for any activity that could undermine the ability of market participants to effectively obtain or use the UICs as anticipated? In the alternative, should the Commission require that there be no fees related to the use of UICs?

52. Would any end users of SBS market data disseminated by a registered SDR have to pay fees relating to an IRSB? If so, why? How much would these fees be?

53. How do data repositories currently identify participants and products? If UICs cannot be assigned by or on behalf of an IRSB, would the current methodologies of data repositories be adequate for assigning UICs pursuant to proposed Regulation SBSR? What would be the likely costs to a registered SDR of assigning such UICs itself?

54. What would be the potential impact on market participants and registered SDRs if no IRSB emerges and there are multiple SDRs per asset class assigning UICs?

55. What additional steps can or should the Commission take to promote internationally recognized standards for UICs?

56. Are there any other factors not already discussed that the Commission should take into account when considering voluntary consensus standards for UICs?

C. Reporting Timeframes for Regulatory Information

The Dodd-Frank Act does not specify the timeframes under which SBS transaction information, beyond that necessary to support real-time public dissemination for enhancing price discovery, must be reported to a registered SDR or to the Commission for regulatory purposes. However, the Commission preliminarily believes that, to further the objectives of the Dodd-Frank Act, SBS transaction information should be reported within a reasonable time following the time of execution—*i.e.,* the point at which the counterparties to a SBS become irrevocably bound under applicable law—rather than waiting until the time a transaction is confirmed.[68] For purposes of proposed Regulation SBSR, the time a transaction is confirmed means the production of a confirmation that is agreed to by the parties to be definitive and complete and that has been manually, electronically, or, by some other legally equivalent means, signed.[69] Requiring reporting at or after the time a SBS transaction is confirmed, rather than at the time of execution, could encourage counterparties to delay confirming in order to delay the reporting of a transaction.

The Commission recognizes that the amount of time required for counterparties to report the data elements that would be required to be reported under proposed Rule 901(d)(1) could vary depending upon, among other things, the extent to which the SBS is customized and whether the SBS is executed or confirmed electronically or manually. The Commission believes that the extent to which a SBS is executed or confirmed electronically is an indication of the degree to which the SBS is or could be systematized, and thus could directly impact the amount of time needed to report such SBS. For example, the Commission believes, based on discussions with industry participants, that the required information would be available relatively quickly for a SBS that is executed and confirmed electronically because most of the information required to be reported would already be in an electronic format. On the other hand, the Commission recognizes that, for those SBSs that are not executed or confirmed electronically, additional time may be needed to systematize the information required to be reported under proposed Rule 901(d) and put it into an acceptable format. Accordingly, proposed Rule 901(d)(2) would obligate a reporting party to report the regulatory, non-real-time information required to be reported under proposed Rule 901(d)(1) promptly, but in no event later than:

- 15 minutes after the time of execution for a SBS that is executed and confirmed electronically;
- 30 minutes after the time of execution for a SBS that is confirmed

[68] *See* proposed Rule 900 (defining "time of execution"); *supra* Section III.B.2.

[69] *See* proposed Rule 900 (defining "confirm"). "Confirmation" refers to the specific documentation that evidences the legally binding agreement. Section 15F(i)(2) of the Exchange Act provides that SBS dealers and major SBS participants shall conform with such standards as may be prescribed by the Commission that relate, among other things, to timely and accurate confirmation of SBSs. Requirements for confirmations issued by SBS dealers and major SBS participants will be the subject of a separate Commission rulemaking.

electronically but not executed electronically; or

• 24 hours after execution for a SBS that is not executed or confirmed electronically.

The Commission preliminarily believes that requiring a SBS that is executed and confirmed electronically to be reported promptly, but in no event later than 15 minutes after the time of execution, is appropriate because such SBS could be easily systematized (if it is not already), thus allowing the SBS to be reported within a time period similar to that required for real-time reporting. The Commission further believes that, for a SBS that is confirmed electronically but not executed electronically, additional time would be needed to report such SBS. However, the Commission preliminarily believes that 30 minutes would be a sufficient amount of time because such SBS already would be put into electronic form for confirmation, and thus likely could be easily systematized and would not require a significant amount of manual handling.

Finally, since a SBS that is not executed or confirmed electronically would likely not already be systematized and could require a significant amount of manual intervention, the proposed rules would allow additional time for reporting. For this group of SBSs, the Commission seeks to balance the need to allow market participants sufficient time to determine the terms of their trade, with the need for regulators to have current and complete information about positions in the SBS market.

Request for Comment

The Commission requests general comments on the proposed reporting times and the basis for the proposed reporting times.

57. Do commenters believe that there should be different reporting times based on whether a SBS is executed or confirmed manually or electronically? If so, why? If not, what other basis should be used to distinguish reporting timeframes, and why? Should all SBSs be reported in the same time frame? If so, what should the timeframe be, and why?

58. Do commenters agree that the reporting time for a SBS that is executed and confirmed electronically should be 15 minutes after the time of execution? Should that period be shorter, for example, 30 seconds, one minute, or five minutes? Why or why not?

59. Do commenters agree that the reporting time for a SBS that is confirmed electronically but not executed electronically should be 30 minutes after the time of execution? Should that period be shorter, for example, one minute, five minutes, or 15 minutes? Why or why not?

60. Do commenters agree that the reporting time for a SBS that is not executed or confirmed electronically should be 24 hours? Should that period be shorter—perhaps eight hours? 12 hours? Should that period be longer—perhaps 36 hours? 48 hours? Why or why not? If the time period were greater than 24 hours, how significant would be the risks that regulators would not know of SBS positions recently taken by counterparties engaging in SBSs that are not executed or confirmed electronically?

61. Do commenters agree with the proposed timeframes for reporting information required to be reported pursuant to proposed Rule 901(d)(1)? Would the timeframes in proposed Rule 901(d)(2) provide adequate time for reporting the information that would be required to be reported under proposed Rule 901(d)(1)? If not, why not? Should the time frame for reporting be shorter or longer? Why or why not?

62. Would public dissemination of information in the proposed timeframes materially reduce market liquidity? If so, for what types of SBSs? Why? What timeframe(s) would balance the concerns about market liquidity with the requirement for real-time reporting?

63. Are there customized SBSs for which it would be too difficult or burdensome to report within 24 hours? How long do those SBS transactions currently take to report to a SDR? What steps would have to be taken to accelerate reporting for such SBS transactions?

D. Reporting of Life Cycle Events

Proposed Rule 901(e) would require the reporting of certain "life cycle event" information. Proposed Rule 900 would define a "life cycle event" to mean, with respect to a SBS, any event that would result in a change in the information reported to a registered SDR pursuant to proposed Rule 901, including a counterparty change resulting from an assignment or novation; a partial or full termination of the SBS; a change in the cash flows originally reported; for a SBS that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the SBS is based (*e.g.,* a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the SBS, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the SBS.

For any life cycle event that results in a change to information previously reported, proposed Rule 901(e) would require the reporting party to promptly provide updated information reflecting such change to the entity to which it reported the original transaction, using the transaction ID, except that:

(1) If a reporting party ceases to be a counterparty to a SBS due to an assignment or novation, the new counterparty would be the reporting party following such assignment or novation, if the new counterparty is a U.S. person; and

(2) If, following an assignment or novation, the new counterparty is not a U.S. person, the counterparty that is a U.S. person would be the reporting party following such assignment or novation.

As discussed in greater detail below, proposed Rule 907(a)(1) would require the policies and procedures of a registered SDR to specify the data elements of a life cycle event that a reporting party would be required to report, which would include, at a minimum, the data elements specified in proposed Rules 901(c) and (d). Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS reported by a reporting party. The assignment of a transaction ID, which would be included in a life cycle event report, would facilitate the reporting of life cycle event information by identifying the particular SBS transaction to which the life cycle event pertained.[70]

The reporting of life cycle event information would provide regulators with access to information about significant changes that occur over the duration of a SBS, including, for example, a counterparty change resulting from an assignment or novation, a change in the data elements necessary to calculate the value of the SBS, a partial or full termination of the SBS prior to the scheduled termination date of the SBS, or a modification of the periodic cash flows originally reported. The Commission preliminarily believes that the reporting of life cycle event information would help to assure that regulators have accurate and up-to-date information concerning outstanding SBSs and the current obligations and exposures of SBS counterparties.[71]

[70] *See infra* Section IV.E.2 (discussing proposed Rule 901(g)).

[71] In a separate rulemaking today, the Commission is proposing to require a registered SDR to establish, maintain, and enforce policies and

Request for Comment

The Commission requests comment on all aspects of the proposed life cycle event reporting requirements.

64. Do participants agree with the proposed definition of life cycle event? What life cycle event information should be reported? Should changes to all information that would be required to be reported under proposed Rules 901(c) and (d) be updated, or only specific items? If so, which items, and why?

65. Should a life cycle event report be formatted to include only the transaction ID and the updated information, or should it include the transaction ID, the updated information, and the other information that would be required to be reported under proposed Rules 901(c) and (d)? Should the Commission prescribe the format of a life cycle event report, or allow a registered SDR to determine the format of the report?

66. Does the proposed rule provide adequate guidance concerning the life cycle events that would be required to be reported? If not, what areas require further guidance? Does the proposed rule provide adequate guidance regarding what information would be required to be reported for each life cycle event?

67. What benefits would result from the reporting of life cycle events? What would be the costs of such reporting?

68. Is it appropriate to require that life cycle events be reported promptly? If not, what should be the appropriate timeframe for reporting such events?

E. Additional Requirements Applicable to Registered SDRs or Participants

1. Time Stamp for Reported Information

Proposed Rule 901(f) would require a registered SDR to time stamp, to the second, receipt of any information required to be submitted pursuant to proposed Rule 901(c), (d), or (e). The Commission believes that this requirement would help regulators to evaluate certain trading activity. For example, a reporting party's pattern of submitting late transaction reports could be an indicator of weaknesses in the reporting party's internal compliance processes. Accordingly, the Commission believes that the ability to compare the time of execution reported with the time of receipt of the report by the registered SDR could be an important component of surveillance activity conducted by regulators.

2. Transaction Identifiers

Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS transaction reported to it. Proposed Rule 900 would define "transaction ID" to mean the unique identification code assigned by a registered SDR to a specific SBS. The Commission preliminarily believes that, because each transaction is unique, it is not necessary or appropriate to look to an IRSB for assigning such identifiers. Accordingly, a registered SDR would be required to use its own methodology for assigning transaction IDs.[72]

The Commission preliminarily believes that a unique transaction ID would allow registered SDRs, regulators, and counterparties to more easily track a SBS over its duration and facilitate the reporting of life cycle events and the correction of errors in previously reported SBS information. The transaction ID of the original SBS would allow for the linking of the original report to a report of a life cycle event. Similarly, the transaction ID would be required to be included on an error report to identify the transaction to which the error report pertained.

3. Counterparty ID Information

As discussed above, proposed Rule 901(d) would require the reporting of a participant ID of each counterparty and, as applicable, the broker ID, desk ID, and trader ID of the reporting party or its broker.[73] For regulators to monitor the SBS positions of market participants, evaluate trading activity, and conduct effective oversight and enforcement of the SBS market, it is important that the applicable UICs for both counterparties to a SBS be available to regulators.

Proposed Rule 901(d) would require the reporting party, for each SBS for which it is a reporting party, to report the participant ID of itself and its counterparty, and (as applicable) the reporting party's broker ID, desk ID, and trader ID. The reporting party would not be required to report the broker ID, desk ID, and trader ID for its counterparty. However, nothing in proposed Regulation SBSR would prevent a reporting party from reporting, or providing for the reporting to a registered SDR, of its counterparty's applicable UICs. For example, orders entered into an electronic trading system could be coded to include all relevant UICs. When the system matches two orders, it could bundle information about both orders (including the UICs) into a transaction report for the reporting party to report to a registered SDR, or the execution venue could provide the UICs directly to the registered SDR on behalf of the reporting party. Further, in a bilateral negotiated SBS, the counterparties could agree to have the non-reporting-party participant provide the applicable UICs to the reporting party for reporting to the registered SDR.

The Commission preliminarily believes that, to the extent that it is not feasible or desirable in a particular SBS transaction for the reporting party to report UICs, proposed Regulation SBSR should contain some means for the registered SDR to obtain the applicable UICs from the counterparty that is not the reporting party. Accordingly, proposed Rule 906(a) would set forth a procedure designed to ensure that a registered SDR obtains applicable UICs for both counterparties to a SBS, not just the reporting party. Proposed Rule 906(a) would require a registered SDR to identify any SBS reported to it for which the registered SDR did not have a participant ID and (if applicable), the broker ID, desk ID, and trader ID of each counterparty. Proposed Rule 906(a) would further require the registered SDR, once a day, to send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks participant ID and (if applicable) broker ID, desk ID, and trader ID. Finally, under proposed Rule 906(a), a participant that receives such a report would be required to provide the missing UICs to the registered SDR within 24 hours of receipt of the report.

The Commission preliminarily believes that the registered SDR would be in the best position to know whether the reporting party had reported the UICs for its counterparty, and to request the missing UICs from any participant as necessary. In addition, the Commission recognizes that some reasonable period should be afforded to the registered SDR to determine what UICs have not been reported, to provide the report to each participant requesting such information, and for the participant to complete and return the report. The Commission preliminarily believes that it would be reasonable to require a registered SDR to produce only one such report per day, and to allow a participant up to 24 hours to complete

procedures reasonably designed to calculate positions for all persons with open SBSs maintained by the registered SDR, and is requesting comment on whether a SDR should calculate (on at least a daily basis) the market value of each position in SBSs for which the registered SDR maintains transaction data. *See* SDR Registration Proposing Release, *supra* note 6 (proposing Rule 13n–5(b)(2) under the Exchange Act).

[72] *Cf. supra* Section IV.B.1 (discussing participant IDs, broker IDs, desk IDs, and trader IDs, which could be used for multiple transactions across multiple asset classes).

[73] *See id.*

and return the report with the requested information.

4. Parent and Affiliate Information

The Commission also preliminarily believes that, to be able to effectively report on participant positions to assist the Commission and other regulators in monitoring systemic risk, a registered SDR should be able to identify all SBS positions within the same ownership group. Therefore, the Commission is proposing Rule 906(b), which would require each participant of a registered SDR to provide to the registered SDR information sufficient to identify its ultimate parent(s) [74] and any affiliate(s) [75] of the participant that also are participants of the registered SDR. Proposed Rule 906(b) also would require a participant to promptly notify the registered SDR of any changes to that information. Under proposed Rule 906(b), a participant would be required to provide this ownership and affiliation information to a registered SDR immediately upon becoming a participant (in other words, as soon as a SBS for which it is a counterparty is required to be reported to the registered SDR). As with other UICs,[76] an ultimate parent ID would be the unique identification code assigned to an ultimate parent by or on behalf of an IRSB (or, if no standards-setting body meet the required criteria or the IRSB has not assigned a UIC to a particular person or unit thereof, by the registered SDR).

Request for Comment

The Commission requests comment on all aspects of the proposed time stamp and identifier requirements.

69. Would it be feasible for a registered SDR to time stamp, to the second, information that would be submitted pursuant to proposed Rule 901? Would some other time increment be appropriate? If so, why?

70. Would requiring a transaction ID for each reported SBS help facilitate reporting of all events related to that SBS? If not, what alternative method should be required to allow for tracking of all events related to a SBS throughout its life?

71. Would transaction IDs be helpful to counterparties? If so, how?

72. Should registered SDRs have the sole responsibility to assign transaction IDs? Would it be feasible for other registered entities (*e.g.,* exchanges or SB SEFs) to assign transaction IDs?

73. Do existing SDRs that accept reports of SBSs assign transaction IDs or an equivalent identifier? If so, how?

74. Do commenters agree that the applicable UICs for both counterparties to a SBS would be useful to regulators? Why or why not?

75. Is the method set forth in proposed Rule 906(a) a practical way for the registered SDR to obtain the applicable UICs from the other counterparty if necessary? Why or why not? If not, what better mechanism should be required to ensure that a registered SDR has applicable UICs for both counterparties for any SBSs for which it acts as a repository?

76. Do commenters agree with the proposal to require participants to provide the required UICs within 24 hours? If not, why not? How long should the counterparty be given to complete the report?

77. Would it be more practicable and less burdensome to require a registered SDR to post on its Web site (in an area accessible only to participants) reports identifying missing UICs and requiring participants to check these reports daily, rather than requiring the registered SDR to send these reports to participants each day, as provided in proposed Rule 906(a)?

78. Would it be unduly burdensome to require a registered SDR to periodically obtain information from each participant that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated? If so, why? Would there be an easier method for assuring that such information is readily available to regulators? If so, what is it?

79. How much information about its counterparty should a reporting party be expected to obtain? Would it be practical to require the reporting party to report applicable UICs on behalf of its counterparty? If not, what alternative do commenters propose? For example, should the Commission directly require each counterparty to report applicable UICs for each SBS?

80. For SBSs executed on a SB SEF or on a national securities exchange where a reporting party might not know the identity of its counterparty, how should the reporting of counterparty UICs be addressed? Should the Commission require the SB SEF or national securities exchange to report to the registered SDR, at a minimum, the participant ID of the counterparty?

81. Do commenters agree with the need for, and the goal of, having parent and affiliate information reported to a registered SDR?

82. What difficulties do commenters envision in establishing and implementing a UIC system for ultimate parents and affiliates of participants of a registered SDR?

6. Format of Reported Information

a. Data Format

To develop a meaningful reporting and dissemination regime for SBSs, the Commission believes that it is essential that all required information for all SBS transactions be reported in a uniform electronic format.[77] Accordingly, proposed Rules 901(h) and 907(a)(2) together would mandate the use of a uniform reporting format for SBS information reported to a particular registered SDR. Specifically, proposed Rule 901(h) would require the reporting party to electronically transmit the information required to be reported by proposed Rule 901 in a format as required by the registered SDR. In addition, proposed Rule 907(a)(2) would require a registered SDR to have policies and procedures that specify the data format (which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information.[78]

The Commission recognizes that this likely would require some change in existing practice, particularly with respect to highly customized transactions that may not be electronically executed or confirmed currently. However, the Commission

[74] *See* proposed Rule 900 (defining "parent" as a legal person that controls a participant); Rule 900 (defining "ultimate parent" as a legal person that controls a participant and that itself has no parent); Rule 900 (defining "control" for purposes of proposed Regulation SBSR as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. A person would be presumed to control another person if the person: (1) Is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (2) directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (3) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital). The proposed definitions of "parent" and "ultimate parent" are designed to identify particular categories of affiliated entities based on their ability to control a participant. Thus, a "parent" refers to a legal person that controls a participant, and the "ultimate parent" refers to an entity that controls a participant but that itself has no parent and thus is not controlled by another entity.

[75] *See* proposed Rule 900 (defining "affiliate" as any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person).

[76] *See supra* Section IV.B.1.

[77] In a separate rulemaking today, the Commission is proposing various requirements for registered SDRs that would include, among other things, standards regarding data that registered SDRs would be required to collect and maintain. *See* SDR Registration Proposing Release, *supra* note 6.

[78] *See infra* Section VI.

believes that such a requirement would provide significant benefits by allowing for more efficient use and analysis of the data. The Commission understands that, currently, information for certain SBSs is communicated using an open-source structured data format called Financial Products Markup Language ("FpML"), which is accepted and used industry-wide and has a sufficiently flexible structure to accommodate new products and asset classes.[79]

Request for Comment

The Commission requests comment on all aspects of the proposed rules regarding the electronic submission of information required under proposed Rule 901 and the formatting of information that would be required to be reported to a registered SDR.

83. Are there different standard data formats currently in use depending on the type or class of SBS?

84. Should the registered SDR have the flexibility to specify acceptable data formats, connectivity requirements, and other protocols for submitting information? Are there disadvantages to this approach? If so, what are they and how should they be addressed?

85. Are there concerns with a registered SDR requiring use of FpML to report SBSs? If so, what are they? Are there any licensing fees associated with use of FpML? If so, what actions should the Commission take, if any, to help ensure wide availability of a common data format by all participants?

86. Are commenters concerned that varying reporting formats would develop if there were more than one registered SDR in each asset class? If so, should there be a uniform reporting format across all registered SDRs? How would commenters recommend that the Commission achieve this goal? Should the Commission require all registered SDRs to use the same format and the same data elements?

b. Reference Codes

The Commission understands that there are—or could be developed—industry conventions for identifying SBSs or reference entities on which SBS are based through readily available reference codes comparable to the CUSIP identifier used for debt, equity, and certain derivative securities.[80] Proposed Rule 903 would permit the use of codes in place of certain data elements for purposes of reporting and disseminating the information required under proposed Regulation SBSR, provided that the information needed to interpret such codes is widely available on a non-fee basis. Specifically, proposed Rule 903 would provide that a reporting party could provide information to a registered SDR pursuant to proposed Rule 901, and a registered SDR could publicly disseminate information pursuant to proposed Rule 902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.

The Commission preliminarily believes that it is appropriate for the information required to interpret any codes used for reporting SBSs be widely available on a non-fee basis. If the information necessary to interpret such codes were not widely available, or available only for a fee, SBS transaction and pricing data might not be meaningfully available to the public. In the absence of proposed Rule 903, a registered SDR potentially could use proprietary code information, thereby requiring all consumers of its SBS market data to purchase from the code creator information necessary to interpret the codes.

Request for Comment

The Commission requests comment on all aspects of the proposed rules regarding the use of reference codes.

87. Do commenters agree it would be useful to permit the use of codes in place of specific data elements? Why or why not?

88. Are such codes currently in use? How would proposed Rule 903 affect how market participants employ any existing codes? Should the Commission permit registered SDRs to publicly disseminate SBS information using existing codes? Are market participants able to understand the codes without having to pay licensing or other usage fees?

89. Who might in the future develop any codes to be used in place of specific data elements? Would it be costly to develop these codes?

90. Is it feasible for information necessary to interpret these codes to be widely available on a non-fee basis? If not, why not? Would codes be developed if developers were not able to charge fees for the information necessary to interpret the codes? How would permitting developers of codes to charge fees for information necessary to interpret the codes affect SBS market participants? Would SBS market participants effectively be compelled to purchase this information?

91. If fees are necessary to protect the investment in intellectual property, what standards should be established to assure that such fees are fair and reasonable and not unreasonably discriminatory?

92. Do commenters believe a better approach would be to permit the use of fee-based codes for reporting information to a registered SDR, provided that SBS transaction reports are disseminated by the registered SDR without the codes, or with codes that are widely available on a non-fee basis? Should a registered SDR be expected to pay any fees or be subject to any usage restrictions imposed by the code creator? Would these fees and usage restrictions impact the public's access to the registered SDR's market data feed?

F. Reporting of Data for Historical SBSs

Section 3C(e)(1) of the Exchange Act requires the Commission, no later than 180 days after the effective date of Section 3C, to adopt rules providing for the reporting to a registered SDR or to the Commission of SBSs entered into before the date of enactment of Section 3C. Section 3C(e)(2) of the Exchange Act requires the Commission to adopt rules that provide for the reporting of SBSs entered into on or after the date of enactment of Section 3C no later than the later of (1) 90 days after the effective date of Section 3C, or (2) such other time after entering into the SBS as the Commission may prescribe by rule or regulation.

The statutory provision applicable to the reporting of SBSs entered into prior to the date of enactment does not limit the SBSs subject to the reporting. In contrast, the statutory provision requiring the Commission to adopt an interim final rule for the reporting of SBSs entered into prior to the effective date of the Dodd-Frank Act does limit the applicability of that rule to such SBSs that had "not expired as of the date of enactment."[81] Indeed, the statutory language applicable in this proposal would not prohibit collection of SBS data on all SBSs entered into since the first SBS, whether or not those SBS positions remain open or have been closed. This would potentially capture a very large amount of data on SBSs going

[79] FpML is based on XML (eXtensible Markup Language), the standard meta-language for describing data shared between applications. The Commission preliminarily believes that FpML would be an appropriate format for data reporting, in part because it is already widely understood and used and can be used across multiple asset classes.

[80] The CUSIP number for a security uniquely identifies a company or issuer, the type of security, and other information about the instrument. From the CUSIP number for a debt instrument, for example, market participants are able to determine the issuer, the date of maturity, the interest rate, the coupon structure, and other terms of the instrument.

[81] 15 U.S.C. 78m[A(a)(2)(A)].

back many years. The Commission preliminarily believes that an attempt to collect many years' worth of transaction-level SBS data (including closed or expired SBSs) would not enhance the goal of price discovery, nor would it be particularly useful to regulators or market participants in implementing a forward-looking SBS reporting and dissemination regime. Furthermore, collecting, reporting, and processing all such data would involve substantial costs to market participants with little potential benefit. Accordingly, the Commission has proposed to limit the reporting of SBSs entered into prior to the date of enactment to those SBSs that had not expired as of that date ("pre-enactment SBSs").[82]

The Commission acknowledges that reporting parties will not necessarily possess all of the information required by proposed Rule 901(c) and (d) with respect to pre-enactment SBSs or SBSs executed on or after July 21, 2010, and before the effective reporting date[83] ("transitional SBSs") (and together with pre-enactment SBSs, "historical SBSs"). Thus, proposed Rule 901(i) would require a reporting party to report all of the information required by proposed Rules 901(c) and (d) for any historical SBSs, to the extent such information is available.[84] For example, a reporting party would not have to report the time stamp of a historical SBS if a time stamp had not already been captured. In addition, if the terms of a SBS had been amended since the initial time of execution, only the most current version of the SBS would be considered the historical SBS that had to be reported pursuant to proposed Rules 901(i) and 910(a).

By requiring reporting of pre-enactment SBS transactions, proposed Rule 901(i) would provide the Commission with insight as to outstanding notional size, number of transactions, and number and type of participants in the SBS market. This would provide a starting benchmark against which to assess the development of the SBS market over time and, thus, represent a first step toward a more transparent and well regulated market for SBSs. The data reported pursuant to proposed Rule 901(i) also could help the Commission prepare the reports that it is required to provide to Congress. Further, proposed Rule 901(i) would require market participants to inventory their positions in SBS to determine what information needs to be reported, which could benefit market participants by encouraging management review of their internal procedures and controls.

The Commission notes that, especially with respect to CDSs, reporting parties may already have reported SBS information about historical SBSs to a data repository. Should such a data repository become registered with the Commission, the Commission would not require reporting parties to submit duplicate information to the registered SDR, except to the extent the reporting party has information in its possession that satisfies the provisions of proposed Rules 901(c) and (d) that had not previously been reported to the registered SDR.

Request for Comment

The Commission requests comment on all aspects of the proposed rules relating to pre-enactment SBSs and transitional SBSs.

93. Do commenters agree with the proposed reporting requirements for historical SBSs? Should the Commission extend the reporting requirement to include SBSs that were entered into prior to the date of enactment of the Dodd-Frank Act that had expired as of that date? If so, what information should be reported with respect to these SBSs? Would this approach be feasible? What would be the benefits of such an approach? Who would use this information, and for what purpose(s)? What would be the costs of this approach?

94. Would data concerning expired SBSs be of use to anyone? If so, who would use this information, and for what purpose?

95. Should the proposed rule "grandfather" all SBSs previously reported to a SDR regardless of whether the reporting party has information in its possession that satisfies the provisions of proposed Rule 901(c) and (d) that had not previously been reported to the registered SDR?

V. Public Dissemination of Security-Based Swap Transaction Information

In seeking to carry out Congress's mandate to require real-time public reporting for all SBSs, the Commission is mindful of Congress's statement in Section 13(m)(1)(B) of the Exchange Act[85] that "[t]he purpose of [Section 13(m)] is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery." Section 13(m)(1)(E)(iv) of the Exchange Act[86] further provides that the rule promulgated by the Commission to carry out the real-time reporting mandate shall contain provisions that take into account whether the public disclosure will materially reduce market liquidity.[87]

By reducing information asymmetries, post-trade transparency has the potential to lower transaction costs, improve confidence in the market, encourage participation by a larger number of market participants, and increase liquidity in the SBS market. The current market is opaque. Market participants, even dealers, lack an effective mechanism to learn the prices at which other market participants transact. In the absence of post-trade transparency, market participants do not know whether the prices they are paying or would pay are higher or lower than what others are paying for the same SBS instruments. Currently, market participants resort to "screen-scraping" e-mails containing indicative quotation information to develop a sense of the market. Supplementing that effort with prompt last-sale information would provide all market participants with more extensive and more accurate information on which to make trading and valuation determinations.

SBSs are complex derivative instruments, and there exists no single accepted way to model a SBS for pricing purposes. Post-trade pricing and volume information could allow valuation models to be adjusted to reflect how other market participants have valued a SBS instrument at a specific moment in time. Public, real-time dissemination of

[82] *See* proposed Rule 900 (defining "pre-enactment security-based swap" to mean any SBS executed before July 21, 2010—the date of enactment of the Dodd-Frank Act—the terms of which had not expired as of that date).

[83] *See* proposed Rule 900 (defining "effective reporting date," with respect to a SDR, as the date six months after the registration date); proposed Rule 900 (defining "registration date," with respect to a SDR, as the date on which the Commission registers the SDR, or, if the Commission registers the SDR before the effective date of proposed Regulation SBSR, the effective date of proposed Regulation SBSR).

[84] Information concerning historical SBSs would be reported, but would not be publicly disseminated. *See* proposed Rules 901(i) and 910. This reporting is consistent with the requirements contained in Rule 13Aa–2T(b)(1) under the Exchange Act, as the Commission recognizes that such information may not be available. *See* Interim Rule Release, *supra* note 16. Furthermore, if a reporting party has reported a SBS to a registered SDR pursuant to proposed Rule 901(i), the reporting party would become obligated to report to the registered SDR any life cycle events pertaining to that SBS. *See* proposed Rule 901(e).

[85] 15 U.S.C. 78m(m)(1)(B).

[86] 15 U.S.C. 78m(m)(1)(E)(iv).

[87] This provision applies only with regard to SBSs described in clauses (i) and (ii) of Section 13(m)(1)(C) of the Exchange Act, not SBSs described in clauses (iii) and (iv) of Section 13(m)(1)(C). *See supra* Section I.B.2 (describing which SBSs fall into each of these four categories).

last-sale information also could aid dealers in deriving better quotations, because they would know the prices at which other market participants have traded. The same information could aid end users in evaluating current quotations, because they would be able to inquire from dealers why the quotations that the dealers are providing them differ from the prices of the most recent transactions. Furthermore, end users that could view last-sale information in real time would be able to test whether quotations offered by dealers before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency could promote price competition and more efficient price discovery in the SBS market.

In other markets, greater post-trade transparency has increased competition among market participants and reduced transaction costs. A number of studies of the corporate bond market, for example, have found that post-trade transparency, resulting from the introduction of TRACE, has reduced transaction costs.[88]

However, the structure of the SBS market and the way in which participants manage risk in this market might be sufficiently different from other financial markets to warrant different approaches to post-trade transparency. The SBS market is almost wholly institutional, unlike other securities markets where there is substantial retail participation. Moreover, the SBS market has many fewer market participants, fewer transactions, and larger trade sizes relative to other securities markets. It could be argued that post-trade transparency in the SBS market might not have the same effects as in other securities markets. Indeed, one study of TRACE stated that "[o]ur evidence suggests that the availability of last sale price information may have little impact on spreads for less active bonds" and that "[w]e do not find any effect (positive or negative) of transparency for very thinly traded bonds."[89]

It could be argued that post-trade transparency in the SBS market, particularly for large-sized trades, might even adversely impact liquidity by increasing the costs of dealers to hedge. In a typical SBS, one party (the "natural long") either has a risk position that it wishes to offset (because, for example, it is long the bonds of a reference company) or it wishes to establish a risk position. The natural long typically would approach one or more dealers to take the other side of the trade. If a dealer were to enter into a SBS with the natural long, the dealer typically would seek to lay off that risk as much as possible, perhaps with another dealer. Eventually, however, the risk would typically be assumed by a market participant (the "natural short") who is willing to assume the risk being laid off by the natural long. In the SBS market, dealers generally are not natural longs or natural shorts, because they do not seek to profit by taking long or short risk positions. Dealers profit, rather, by collecting spreads between the price at which they buy risk and the price at which they sell risk, and by charging commissions.

The larger the natural long's initial risk position, the more difficult it would likely be for a dealer that enters into an SBS with the natural long to lay off the risk. All other things being equal, it would likely be easier for the dealer to find another dealer or a natural short willing to take on a small risk than a larger one. This is the case even in an opaque market, such as the SBS market as it exists today. The difficulties in transferring the risk could be even greater if the transaction details of the initial SBS between the natural long and the dealer were publicly disseminated in real time. A dealer trying to engage in hedging transactions following an initial, large SBS trade could be put in a weaker bargaining position relative to subsequent counterparties, who could anticipate the structure of the hedge.

In an opaque market, market participants have to rely primarily on their understanding of the market's fundamentals to arrive at a price at which they would be willing to assume risk. With immediate real-time public dissemination of a block trade, however, market participants who might be willing to offset that risk—*i.e.,* other dealers and natural shorts—could extract rents from a dealer that takes the risk from the natural long. Because the initial dealer would not internalize those higher costs, it would most likely seek to pass those costs on to the natural long in the form of a higher price for the initial SBS up front. Alternatively, the initial dealer could choose not to enter into the initial SBS if the dealer's cost to hedge increased. In other words, increasing the dealer's initial cost to hedge could increase costs to those seeking to take a natural long position both in the form of less favorable SBS prices for the natural long and potentially fewer counterparties for a natural long to transact with, if certain dealers were to scale back their activity in the SBS market. This could lead to less liquidity in the SBS market, and thus lower trading volume and less ability for market participants to manage risk.[90] It also might be argued that increased post-trade transparency could drive large trades to other markets that offer the opacity desired by traders, creating fragmentation and harming price efficiency and liquidity. This possibility is consistent with the argument that large, informed traders may prefer a less transparent trading environment that allows them to minimize the price impact of their trades.[91]

Under this view of the SBS market, real-time public dissemination of SBS block trades could result in market inefficiencies, as evidenced by fewer transactions or less liquidity. If the natural long were unable or unwilling to assume higher costs for the initial SBS transaction, it might be left with an undesired level of risk, because the market has been unable to relocate the risk to others who are more willing or able to assume it. Furthermore, higher overall transaction costs could hurt dealers, even though they can pass on to the natural long the higher costs to hedge. This is because post-trade transparency could cause overall transaction volumes to decline, thereby reducing profits accruing to dealers, whether in the form of spreads or commissions. Furthermore, to the extent natural shorts are able under a post-trade transparency regime without a block trade exception to extract rents from natural longs (albeit indirectly), there could be a wealth transfer from natural longs to natural shorts. This could be viewed as inefficient, because the prices charged (and presumably obtained) by the natural shorts are not based solely on economic fundamentals, but also are impacted by the predicament of the natural longs (or dealers that have traded with the natural longs), where all market participants

[88] *See* Amy K. Edwards, Lawrence Harris, & Michael S. Piwowar, *Corporate Bond Market Transparency and Transaction Costs,* J. of Fin., Vol. 62, at 1421–1451 (2007); Hendrik Bessembinder, William F. Maxwell, & Kumar Venkataraman, *Market Transparency, Liquidity, Externalities and Institutional Trading Costs in Corporate Bonds,* J. of Fin. Econ., Vol. 82, at 251–288 (2006). It should be noted that Amy Edwards, one of the co-authors of the first article cited, currently serves as an economist in the Commission's Division of Risk, Strategy, and Financial Innovation.

[89] Michael A. Goldstein, Edith S. Hotchkiss, & Erik R. Sirri, *Transparency and Liquidity: A Controlled Experiment on Corporate Bonds,* Rev. of Fin. Stud., Vol. 20, Issue 4, at 235–273 (2007), at 269, 270.

[90] *See* N.Y. Naik, A. Neuberger, & S. Viswanathan, *Trade Disclosure Regulation in Markets with Negotiated Trades,* Rev. of Fin. Stud., Vol. 2, Issue 4, at 873–900 (1999).

[91] *See* Ananth Madhavan, *Consolidation, Fragmentation, and the Disclosure of Trading Information,* Rev. of Fin. Stud., Vol. 8, Issue 3, at 579–603 (1995).

know that the natural longs (or the dealers) have a large risk position that they presumably will wish to offset in the near future.

On the other hand, fully and immediately disseminating SBS transactions to the public—even those of large notional size—could incentivize additional market participants to compete to purchase the risk that the natural long is trying to acquire or offset. In other words, the desire by natural shorts to extract rents from natural longs might be offset by more natural shorts competing to acquire the risk. In this view, greater post-trade transparency would result in lower rather than higher costs for natural longs to offset or acquire their risk positions. In the existing, opaque market for SBSs, any individual market participant possesses only incomplete knowledge of when transactions occur, and thus when opportunities arise to enter the market by offering to offset risk. Moreover, any individual market participant possesses only incomplete information about where others view the price of risk. Real-time public dissemination of both the price and full size of all SBS transactions, including block trades, could cause more market participants to bid to take on risk after seeing a report of the block trade. Moreover, full post-trade transparency of block trades would allow natural shorts to know the prices at which natural longs transacted, which would enable natural shorts to bid more efficiently to accept the risk, particularly if natural shorts used the post-trade information as an input to, rather than as a substitute for, their own independent valuation and pricing decisions. Currently, a natural short—without knowledge of the price at which the natural long transacted—could underprice its willingness to acquire the risk, resulting in a windfall profit for the dealer, who can capture a greater spread.

Discussed in greater detail below are the provisions in proposed Regulation SBSR relating to post-trade transparency. In particular, the Commission is proposing Rules 907(b) and 902(b) relating to block trades, and is thereby taking into account the possibility that public disclosure required under the Dodd-Frank Act could materially reduce market liquidity for SBSs of large notional size.[92] These proposed rules are designed to balance the benefits of post-trade transparency against the potential harm that could be done to dealers and natural longs that could face higher costs of transferring or hedging a large risk position after other market participants learn of the execution of a block trade.

The Commission acknowledges that it would be difficult at this stage to accurately predict how post-trade transparency in general, or the particular methods of post-trade transparency discussed in this release, would affect the SBS market. The Commission is mindful that there are similarities and differences between the SBS market and the other securities markets that the Commission regulates, and that these similarities and differences may impact how post-trade transparency could affect the SBS market, in contrast to how post-trade transparency affects other securities markets. Moreover, the effects of immediate real-time dissemination could differ between the near term and the long term, particularly as the SBS market evolves in response to other regulatory actions. The Commission expects that, as post-trade transparency is implemented in the SBS market, new data will come to light that will inform the discussion and could cause subsequent revision of Regulation SBSR. Whatever approach is ultimately adopted, the Commission will study the development of the market closely, particularly with regard to block trades, and make subsequent revisions to the rules relating to post-trade transparency in the SBS market as necessary or appropriate.

Request for Comment

The Commission requests comment generally on how the Commission should address Congress's instruction in Section 13(m)(1)(E)(iv) of the Exchange Act that, with respect to certain SBSs, the rule promulgated by the Commission to carry out the real-time reporting mandate shall contain provisions that take into account whether the public disclosure will materially reduce market liquidity. In particular:

96. Would post-trade transparency have an effect on the SBS market similar to its effect in other securities markets? Why or why not?

97. Academic studies of other securities markets generally have found that post-trade transparency reduces transaction costs and has not reduced market liquidity. How do those markets differ or compare to the SBS market? How would those similarities or differences affect post-trade transparency in the SBS market?

98. The SBS market currently is almost wholly institutional. Would this characteristic impact the effect of post-trade transparency on the SBS market? If so, how and how much? Are the needs of market participants in the SBS market for access to transaction information different than the needs of market participants in other securities markets for access to transaction information?

99. A significant amount of trading in the SBS market is currently carried out by only a limited number of market participants. Would this characteristic impact the effect of post-trade transparency on the SBS market? If so, how and how much? For example, is there a concern that it would be easier to determine the identity of the counterparties to a SBS transaction in certain instances based on the real-time transaction report? If so, what would be the harm, if any, of such knowledge? Would the answer differ depending upon the liquidity of the SBS instrument, or whether it was a customized SBS or not?

100. Overall, the SBS market is significantly more illiquid than other securities markets that have post-trade transparency regimes. How would this characteristic impact, if at all, the effect of post-trade transparency on the SBS market? Do commenters believe that post-trade transparency could materially reduce market liquidity in the SBS market, or particular subsets thereof? Why and how? Please be specific in your response and provide data to the extent possible.

101. In an illiquid market (such as the CDS market for smaller reference entities), there will likely be fewer last-sale prints than in a more liquid market (such as the CDS market for large corporate debt issuers). Would these few last-sale prints in the illiquid market have more, less, or the same value as prints in the more liquid market? Why or why not?

102. How would a post-trade transparency regime in SBSs affect the liquidity of the underlying securities? For example, how, if at all, would the post-trade transparency regime affect liquidity in the corporate bond market?

103. Should there be exceptions other than a block trading exception to post-trade transparency to avoid unnecessarily reducing market liquidity, *e.g.,* for SBSs based on illiquid securities? Please be specific in your response and provide data to the extent possible.

104. As noted above, Section 13(m)(1)(E)(iv) of the Exchange Act provides that, with respect to real-time public dissemination of information about SBSs that are subject to mandatory clearing or that are not subject to mandatory clearing but are cleared regardless, the rule promulgated by the Commission regarding such

[92] *See* 15 U.S.C. 78m(m)(1)(E)(iv).

dissemination shall contain provisions "that take into account whether the public disclosure will materially reduce market liquidity." Do commenters believe that there are circumstances under which real-time public dissemination of information about SBS transactions, as contemplated by proposed Regulation SBSR, whether or not the transactions are block trades, would materially reduce market liquidity? If so, how, why, and under what circumstances would real-time public dissemination affect market liquidity? If market liquidity would be materially reduced, how do commenters believe that the Commission should address that issue, given the general requirement in Section 13(m)(1)(C) of the Exchange Act that the Commission generally shall require real-time public reporting for all SBSs?

A. Registered SDRs as Entities With Duty To Disseminate

The Dodd-Frank Act identifies four types of SBSs and states, with respect to each, that the Commission shall require real-time public reporting for such transactions.[93] In implementing the requirements of the Dodd-Frank Act, the Commission preliminarily believes that the best approach would be to require registered SDRs to disseminate SBS transaction information, and to require other market participants to report such information to a registered SDR in real time, so that the registered SDR can in turn provide transaction reports to the public in real time.[94] Under this approach, market participants would not have to obtain SBS market data from other potential sources of SBS transaction information—such as SB SEFs, clearing agencies, brokers, or the counterparties themselves—to obtain a comprehensive view of the SBS market. Requiring registered SDRs to be the registered entities with the duty to disseminate information would produce some degree of mandated consolidation of SBS transaction data and help to provide consistency in the form of the reported information. This approach is designed to limit the costs and difficulty to market participants of obtaining and assembling data feeds from multiple venues that might disseminate information using different formats.

Multiple uniquely formatted data feeds could impair the ability of market participants to receive, understand, or compare SBS transaction data and thus undermine its value. The Commission is cognizant of this potential and seeks public comment on means to address this issue. One way to address that issue would be to dictate the exact format and mode of providing required SBS transaction data to the public. Although this approach could promote consistency, the Commission preliminarily believes that such an approach could inhibit innovation and the development of best practices, and could inadvertently omit key elements to a successful SBS transaction reporting system. The Commission also preliminarily believes that such an approach may be difficult to administer over time.

The Commission understands that existing SDRs that accept SBS data do not currently have the functionality to publicly disseminate data in real time. The Commission notes that nothing in the proposal would prohibit a registered SDR from contracting with a vendor to carry out the dissemination function. Over time, as registered SDRs and SBS transaction reporting become more established, it is possible that alternative approaches for reporting and disseminating SBS transaction information could develop. Thus, the proposal would not prohibit registered SDRs that cover the same asset classes from acting together to create a central consolidator that would disseminate information for all SBSs in that asset class. Allowing registered SDRs to satisfy their dissemination obligation by providing information to a third party that would consolidate and disseminate information for all SBSs in an asset class might provide an economic incentive for registered SDRs to create, fund, and operate a single central consolidator.

The Commission is sensitive to the possibility that there could emerge multiple registered SDRs in an asset class. Should this occur, the Commission and the markets would be confronted with the possibility that different registered SDRs could adopt different dissemination protocols, potentially creating fragmentation in SBS market data. Based on conversations with market participants, however, the Commission preliminarily believes that the most likely outcome is for the market to have only a few registered SDRs (although nothing in the Dodd-Frank Act prevents more from being established). Furthermore, even if multiple registered SDRs were to be established in an asset class, it is unclear whether market participants would have an incentive to spread their business across those multiple registered SDRs. The Commission seeks comment on the likelihood of multiple registered SDRs per asset class emerging; how that would likely affect market participant behavior; and what steps, if any, that the Commission should take to address any attendant regulatory issues that could arise.

One step that the Commission could take would be to require one consolidated reporting entity to disseminate all SBS transaction data for that asset class, by requiring each registered SDR in an asset class to provide all of its SBS data to a "central processor" that would also be a registered SDR. There is substantial precedent for this approach in the equity markets, where market participants may access a consolidated quote for national markets system securities and a consolidated tape reporting executed transactions. A central processor could receive a data feed from each registered SDR, consolidate the information, and then publicly disseminate the consolidated data. However, this approach likely would take more time to implement and may not be warranted given the present SBS market structure. Furthermore, as noted above, the proposal would not prohibit registered SDRs that cover the same asset classes from determining on their own to act together to create a central processor.

Another approach would be to require public dissemination pursuant to a "first touch" or "modified first touch" approach. For a first touch approach, a SBS dealer or major SBS participant that is a party to the SBS would be responsible for dissemination, and for SBSs in which no SBS dealer or major SBS participant is a party, the SDR would be responsible for dissemination. Under a modified first touch approach, a SB SEF or national securities exchange would be required to disseminate the information for those SBSs executed on the SB SEF or national securities exchange. In connection with either of these approaches, the Commission could allow a party required to disseminate to satisfy its obligation if it provided the information to a third-party consolidator that would disseminate the information for all SBSs in that asset class. However, if that did not occur in a timely manner—if, for example, the reporting parties could not agree on the practicalities of such an undertaking, or if not all reporting parties wanted to join—it would result

[93] *See* 15 U.S.C. 78m(m)(1)(C).

[94] One commenter has expressed support for this approach. *See* Benchmark Letter at 2 (arguing that trade reporting and dissemination, including the reference data and identifier system, "should be provided via a non-profit industry utility such as a SDR"). *See also* letter from Larry E. Thompson, General Counsel, DTCC, to Mary Schapiro, Chairman, Commission, and Gary Gensler, Chairman, CFTC, at 1 (November 15, 2010) (stating that a registered SDR "should be able to provide * * * a framework for real-time reporting from swap execution facilities and derivatives clearinghouses").

in less consolidation than the proposed approach to require registered SDRs to disseminate the SBS data.

Request for Comment

The Commission requests comment on all aspects of the proposed rules requiring registered SDRs to disseminate SBS information.

105. Would requiring registered SDRs to disseminate SBS information be an effective means of dissemination? Why or why not? Would another approach be more effective? What would be the advantages, or disadvantages, of requiring different registered entities, in addition to or instead of registered SDRs, to disseminate SBS information?

106. Would the presence of multiple disseminators increase the need for a consolidated data feed? Why or why not?

107. Should the Commission require consolidation of data feeds now? Or over time if multiple registered SDRs begin to operate in an asset class?

108. What are the costs and benefits of requiring registered SDRs to disseminate SBS data? Would this approach have an impact on an entity's desire to become a registered SDR? Are other entities, such as SB SEFs, better suited to disseminate SBS data? How should the Commission balance the costs to particular entities with the benefits of greater consolidation of publicly disseminated SBS data?

B. Dissemination in Real Time

Proposed Rule 902(a) would require a registered SDR to publicly disseminate a transaction report of a SBS, other than a block trade,[95] immediately upon (1) receipt of information about the SBS from a reporting party, or (2) re-opening following a period when the registered SDR was closed.[96] The Commission preliminarily believes that "immediately" as used in this context would require a wholly automated process to accept the incoming information, process the information to assure that only information required to be disseminated is disseminated, and disseminate a trade report through electronic means. The transaction report that is disseminated would be required to consist of all the information reported by the reporting party pursuant to proposed Rule 901(c),[97] along with any indicator or indicators contemplated by the registered SDR's policies and procedures.[98] In addition, the registered SDR would be required to have policies and procedures that specify the specific data elements that must be reported to it and the format for reporting this information,[99] which could help to provide greater uniformity in the disseminated transaction data.

The Commission recognizes that there may be circumstances when a registered SDR's systems might be unavailable for publicly disseminating transaction data. In such cases, as provided in proposed Rule 902, the registered SDR would be required to disseminate the transaction data immediately upon its re-opening.[100]

C. Block Trades

The Commission proposes to establish criteria for what constitutes a block trade and for specifying a time delay for disseminating certain information about a block trade to the public, for all SBSs except those that are determined to be required to be cleared under Section 3C(b) of the Exchange Act but are not cleared.[101] Proposed Rule 907(b) would establish criteria for what constitutes a block trade, and proposed Rule 902(b) would specify the time delay for disseminating certain information about a block trade to the public.

1. Role of Registered SDRs Generally

Proposed Rule 900 would define "block trade" to mean a large notional SBS transaction that meets the criteria set forth in proposed Rule 907(b). Proposed Rule 907(b)(1) would require a registered SDR to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SBS instruments reported to the registered SDR in accordance with the criteria and formula for determining block size as specified by the Commission. In determining block trade thresholds, a registered SDR would be performing mechanical, non-subjective calculations.

The Commission preliminarily believes that requiring a registered SDR to calculate and publicize block trade thresholds pursuant to its written policies and procedures would allow for a more streamlined and accurate process, as registered SDRs would have more ready access to the data necessary to make block trade calculations. Further, placing the responsibility on registered SDRs rather than reporting parties would eliminate the burden on reporting parties for making block trade calculations, and should provide greater uniformity in what constitutes a block trade.

2. Block Trade Threshold

As noted above, Section 13m(1)(E)(ii) of the Exchange Act[102] requires the Commission rule for real-time public dissemination of SBS transactions "to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade)." In this release, the Commission is proposing general criteria that it would consider when setting specific block trade thresholds, but is not proposing specific thresholds at this time. The Commission believes that it would be appropriate to seek additional comment from the public, as well as to collect and analyze additional data on the SBS market, in the coming months. The Commission intends to propose specific block trade thresholds simultaneous with the adoption of Regulation SBSR (in whatever form it may ultimately take).

The Commission preliminarily believes that the general criteria for what constitutes a large notional SBS transaction must be specified in a way that takes into account whether public disclosure of such transactions would materially reduce market liquidity, but presumably should be balanced by the general mandate of Section 13(m)(1) of the Exchange Act, which provides that data on SBS transactions must be publicly disseminated in real time, and in a form that enhances price discovery. In considering criteria for what constitutes a large notional SBS, the Commission notes that there are mechanisms by which reporting data on any SBS might impact liquidity. If the intent to trade were publicly reported prior to a transaction taking place (*i.e.,* if there were pre-trade transparency), it would be reasonable to suppose that the marketplace would have an opportunity to react to this information in a way that

[95] *See infra* Section V.C (discussing block trades).

[96] The Commission notes that FINRA disseminates information on all transactions in TRACE-eligible securities immediately upon receipt of a transaction report. *See* FINRA Rule 6750(a). The Commission also notes that the Municipal Securities Rulemaking Board disseminates information on most transactions in municipal securities almost immediately. *See http://emma.msrb.org/EducationCenter/FAQs.aspx?topic+AboutTrade.*

[97] *See supra* Section III.B (discussing the data elements required to be reported in real time by proposed Rule 901(c)).

[98] *See* proposed Rule 907(a)(4).

[99] *See* proposed Rules 907(a)(1) and (2).

[100] *See infra* Section V.D (discussing proposed Rule 904, which deals with hours of operation of registered SDRs and related operational procedures).

[101] *See* 15 U.S.C. 13m(m)(1)(C)(iv) (providing that, with respect to SBSs that are determined to be required to be cleared under Section 3C(b) but are not cleared, the Commission shall require real-time public reporting of such transactions).

[102] 15 U.S.C. 13m(m)(1)(E)(ii). This provision applies with respect to SBSs that are subject to mandatory clearing and SBSs that are not subject to mandatory clearing but are cleared at a registered clearing agency.

impacted the ability of such a transaction to be completed at the desired price, which might in turn impact the liquidity of such a market by causing participants to withdraw from trading or reduce the size of their trades.

However, this effect could not manifest itself directly via post-trade transparency, since the transaction has already taken place. For post-trade transparency to have a negative impact on liquidity, market participants would need to be affected in a way that either: (1) Impacted their desire to engage in subsequent transactions unrelated to the first, or (2) impacted their ability to follow through with further actions after the reported transaction has been completed that they feel are a necessary consequence of the reported transaction. In instance (1), post-trade dissemination of transaction prices, without necessarily any reference to notional size, could impact the desire for certain market participants to trade if spreads narrowed, because price transparency led to an increased negotiating ability for market participants who otherwise would not have been privy to such information. But this same transparency also could lead to an increase in liquidity if other market participants increase their trading as a result of having access to new information or of narrower spreads. It may not be possible to estimate with any certainty which of these factors will outweigh the other as the SBS market continues to evolve. Analogs to other markets (such as fixed income or equities) may provide guidance; however, those markets each have structures and instruments that differ significantly from the SBS market.

In determining whether there should be a delay in the disclosure of prices of SBS block trades, without necessarily any reference to notional size, the Commission is guided by the general mandate of Section 13(m)(1) of the Exchange Act, which provides that transaction information should be disseminated in a form that enhances price discovery. Nonetheless, the Commission recognizes that mandating disclosure of trades below a certain size would essentially signal to the market that a trade was at or above that size—that is to say, would signal that the trade was "of size"—even when there is no disclosure of the precise size of the trade if it is above some threshold size. The Commission preliminarily believes that even in very illiquid markets transaction prices form the foundation of price discovery. Past transactions may not be indicative of those in the future, and may not themselves accurately reflect fundamental value, but they provide an objective starting point for participants to consider. Moreover, in an illiquid market, the low frequency of transactions and potentially wide variation of past prices inform participants as to uncertainty in pricing that they may expect in the future, which may not only influence trading decisions, but could also play a role in mark-to-market valuations and risk management. There does not seem to be a reason that post-trade price disclosure for large notional SBS transactions would be less relevant for price discovery than similar disclosure for other SBSs. Therefore, as described further below, the Commission is proposing that prices for block trades be disseminated in the same fashion as prices for non-block-trade transactions.

In contrast, instance (2) above considers that disclosure that a block trade has taken place, with or without the exact size of the trade, may lead to a reduction in liquidity if one or both of the parties engaged in such a transaction need to take further actions in the marketplace after the reported transaction was completed and disseminated, and dissemination would inhibit their ability to take such action. In this situation, one or both of the parties might choose not to have participated in the original transaction.

One reason an SBS counterparty might desire to take further action after an initial transaction is completed would be for hedging purposes. This hedge may take the form of re-entering the SBS market on the contra side, or hedging the exposure underlying the initial SBS by taking a contra position in the cash security market. Whether or not one or more parties to a transaction will be subsequently hedging its exposure after the transaction is complete cannot be discerned from data about the transaction. However, if a transaction is to be hedged, the size of the transaction would be a factor in how readily the hedge can be executed.

For transactions that are sufficiently small, disseminating the exact size of the transaction would likely not provide other market participants with information that could be used to the detriment of the hedging party, since the hedging transaction would be indistinguishable from other market activity. However, for transactions that are sufficiently large, it may be the case that disseminating the size of such a transaction would provide a signal to other market participants that there is the potential, though not certainty, that a large transaction could take place in an SBS or a related security. Market participants might be able to use this information to their advantage in a way that disadvantages the hedging party and disincents that party from engaging in such types of SBS transactions. In this fashion, post-trade transparency for one transaction is transformed into pre-trade signaling for another.

To address this issue, the Commission preliminarily believes that the size of an SBS transaction that is sufficiently large to signal other market participants that there is the *potential for a subsequent outsized transaction,* should itself be suppressed to provide time for those subsequent transactions, if any, to be absorbed by the market. Moreover, the Commission recognizes that mandating disclosure of trades below a certain size would essentially signal to the market that a trade was at or above that size—that is to say, would signal that a trade was "of size"—even when there is no disclosure of the precise size of the trade, if it is above some threshold size.

There are a variety of metrics that can be used to determine the criteria for whether or not a SBS transaction should be considered a block trade. These include the absolute size of the transaction, the size of the transaction relative to other similar transactions, the size of the transaction relative to some measure of overall volume for that SBS instrument, and the size of the transaction relative to some measure of overall volume for the security or securities underlying the SBS. The most relevant metric would depend on the specific nature and timing of the hedging, which cannot be discerned from data about the transaction. However, if the goal of not publicly disseminating the size of a large notional SBS transaction is to prevent inadvertent signaling to the market of potential large subsequent transactions, then criteria should be chosen in a way that minimizes such signaling.

This suggests the use of one or more metrics that can help distinguish ordinary transaction sizes from extraordinary transaction sizes. An ordinary transaction size would be one in which the size of subsequent hedging transactions (if any) would be indistinguishable from the rest of the market. Extraordinary transaction sizes would be those in which subsequent transactions could be distinguished from the rest of the market.

One possibility could be to order the sizes of all transactions for a given SBS instrument and identify the top N-percent as large. However, it is not *a priori* obvious what percent should be used. Also, using a simple percentile threshold would not account for the distribution of trade sizes that could be widely dispersed or narrowly clustered. In addition, the distribution of the trade sizes could change over time.

A second possibility would be to examine trade size data to determine if the distribution of trade sizes suggests thresholds that could be used to discern ordinary versus extraordinary trade size. The figure below plots the distribution of trade sizes, bucketed in bins of $5 million, for over 370,000 single name corporate CDS transactions.[103] Almost half of all trades have sizes of less than $5 million, and over 90% have sizes less than $15 million. There is a small cluster of trades between $15 million and $30 million, followed by a long tail beginning at $30 million and extending to over $100 million.

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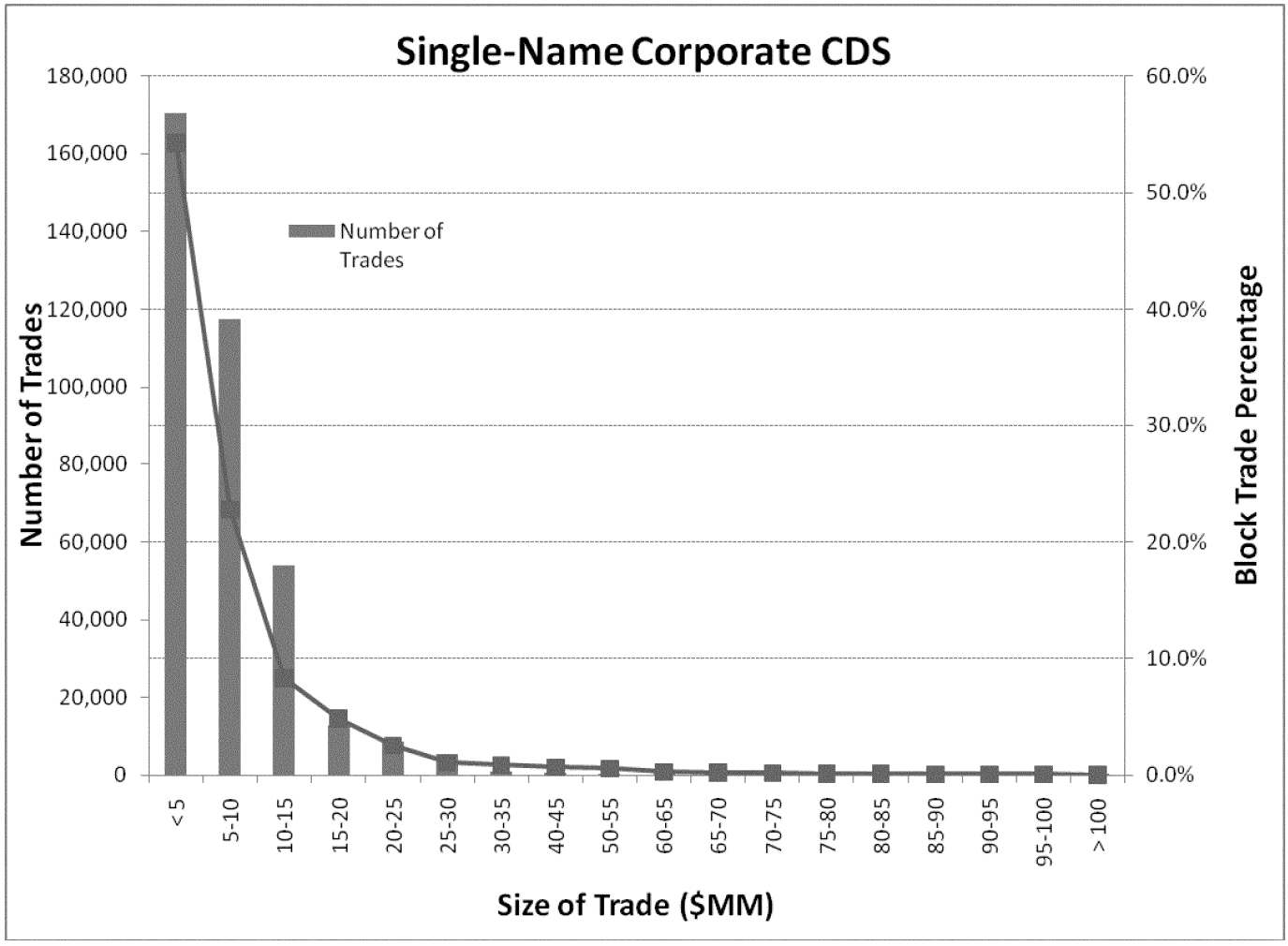
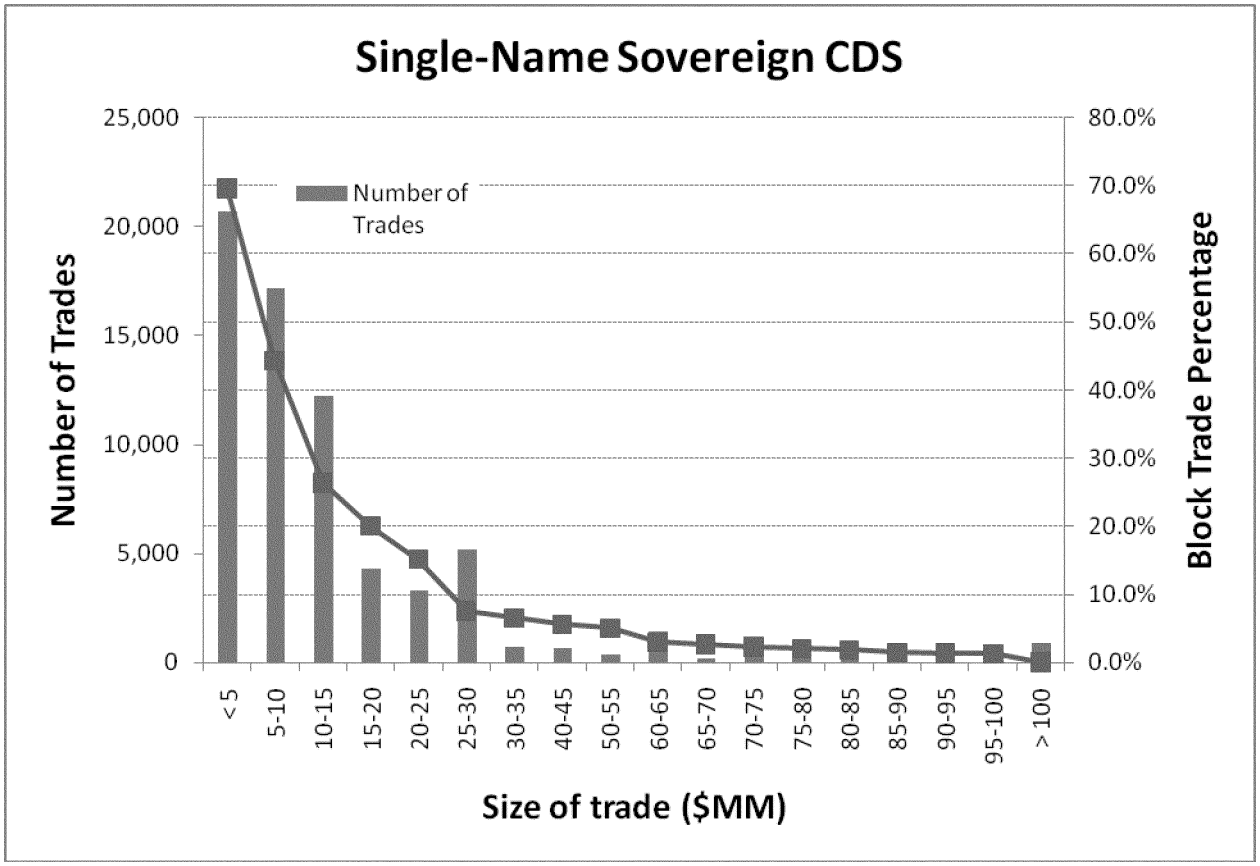


These data would suggest two possible thresholds—$15 million or $30 million. A cutoff of $15 million would have resulted in about 8% of trades executed over this time period being considered large notional, and a cutoff of $30 million would have resulted in about 1% of trades being considered large notional.

The second figure below presents similar data for over 20,000 sovereign CDS transactions from the same source over the same time period. The plot suggests similar cutoff points, although there are notably many more transactions in the tail for sovereign CDS than there were for single-name corporate CDS. A cutoff of $15 million would result in about 26% of all trades being considered large notional, and a cutoff of $30 million would result in about 7.5% of all trades being considered large notional.

[103] *See supra* note 11.



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Splitting the universe of transactions into single-name corporate CDS and sovereign CDS would not provide for potential differences between individual corporates or sovereigns that may have unique distributions or liquidity profiles. As a further consideration, the Commission notes that some SBSs may trade very infrequently, such as only a few times per month. Under these conditions, it would not be obvious how to distinguish an ordinary sized transaction from an extraordinary size. However, if a market were that illiquid it would most likely not be the case that subsequent hedging would be done in that same market. In such case, it is somewhat harder to see how the post-trade reporting of size would *further* impact the ability for one or more market participants to affect subsequent hedging transactions, since in such an illiquid market it may not be possible to hedge at all.

The Commission also notes that this criterion considers only typical trade sizes within the CDS market without regard to overall daily, weekly, or monthly volume. This criterion also does not consider liquidity or volume in the underlying cash markets. Inclusion of volume metrics may be helpful in defining the criteria for what constitutes a block trade. For example, a single trade that is equivalent in size to a full- or half-day's average volume may be considered out-sized. On the other hand, if a particular SBS trades only once or twice per day then every trade would be equivalent to a full or half-day's average size. The Commission invites comment on if and how volume considerations should be included in the criteria for setting block trade thresholds.

For the reasons discussed above, a simple metric based on recent trade sizes of SBSs designed to help distinguish ordinary from extraordinary trade sizes could address the issue of inadvertently signaling market participants that a potential large transaction in a specific SBS or underlying security may be forthcoming as the result of one or more participants hedging a just-completed large notional transaction. On the other hand, the Commission recognizes that requiring disclosure of the fact that a block trade took place may raise some of the same concerns as requiring disclosure of the exact size of the large trade, and that to mandate disclosure of trades below a certain size is tantamount to mandating disclosure that a large trade occurred, even if the precise size of the trade is not disclosed. The Commission is interested in and invites comment on whether there are other means by which the dissemination protocol for block trades could effectively not reveal the size of a block trade or mitigate the potential effects of revealing that a block trade took place, while still offering the price component in real time. For example, could the block trade be disseminated with a "proxy" size, such as the size of the block trade threshold or a randomized size, with no identifier showing that the trade is a block trade?

Finally, the Commission preliminarily believes that it would not be appropriate to establish different block trade thresholds for similar instruments with different maturities. This is reflected in the proposed definition of "security-based swap instrument," which would mean "each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index." [104] The proposed definition would not include any distinction based on tenor or date until expiration. The Commission is proposing this approach for three reasons. First, the larger the number of distinctions between SBS instruments that are created by the proposed rule, the larger the number of potentially

[104] *See* proposed Rule 900.

illogical categorizations at the margins. For example, there would be little economic rationale to draw a distinction between SBSs alike in all respects except that they had maturities one day apart. Second, the Commission understands that SBSs in the same asset class, with the same underlying reference asset, reference issuer, or reference index have pricing impacts on each other, regardless of their maturities. This is because market participants typically price SBSs based on the same reference issuer or index along a curve, whereby prices at points along the curve where no hard data exist may be interpolated or extrapolated from different points along the curve where harder data (such as publicly disseminated last-sale prints) may exist. Thus, even if a SBS of an unusual maturity were traded only infrequently, the market in that SBS would likely be affected more by the characteristics of other SBSs based in the same asset class, with the same underlying reference asset, reference issuer, or reference index, rather than the fact that there is low liquidity in SBSs having that specific maturity. Third, a regime that differentiated SBSs based on maturities could invite market participants to fragment the market by creating SBSs with non-standard maturities in an effort to gain more favorable block trade treatment.

3. Exclusions From Block Trade Definition

Proposed Rule 907(b)(2)(i) would provide that a registered SDR shall not designate as a block trade any SBS that is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based.[105] A SBS can be designed as a synthetic substitute for a position in the underlying equity security or securities. There is no delay in the reporting of block trade transactions for equity securities in the United States. Proposed Rule 907(b)(2)(i) is designed to discourage SBS market participants from evading post-trade transparency in the equity securities markets by using synthetic substitutes in the SBS market.[106]

Proposed Rule 907(b)(2)(ii) would provide that a registered SDR shall not designate as a block trade any SBS contemplated by Section 13(m)(1)(C)(iv) of the Exchange Act, *i.e.,* any SBS that is determined to be required to be cleared under Section 3C(b) of the Exchange Act, but that is not cleared. The Dodd-Frank Act expressly requires the Commission to mandate real-time public dissemination for SBSs that are determined to be required to be cleared but are not cleared.

4. Public Dissemination of Block Trades

Proposed Rule 902(b) would provide that a registered SDR shall publicly disseminate a transaction report of an SBS that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report would be required to consist of all the information reported by the reporting party pursuant to proposed Rule 901(c), except for the notional size, plus the transaction ID and an indicator that the report represents a block trade. The Commission proposes that the registered SDR would be required to publicly disseminate a complete transaction report for such block trade (including the transaction ID and the full notional size) as follows:

- Proposed Rule 902(b)(1) would provide that, if the SBS was executed on or after 05:00 UTC and before 23:00 UTC of the same day (which corresponds to 12 midnight and 6 p.m. EST), the transaction report (including the transaction ID and the full notional size) shall be disseminated at 07:00 UTC of the following day (which corresponds to 2 a.m. EST of the following day).
- Proposed Rule 902(b)(2) would provide that, if the SBS was executed on or after 23:00 UTC and up to 05:00 UTC of the following day (which corresponds to 6 p.m. until midnight EST), the transaction report (including the transaction ID and the full notional size) shall be disseminated at 13:00 UTC of that following day (which corresponds to 8 a.m. EST of the following day).

Under proposed Rule 902(b), market participants would learn the price of an SBS block trade in real time, although not the notional size. The Commission preliminarily believes that this approach promotes the public's interest in price discovery without subjecting the block trade counterparties to undue risk of a significant change in the price necessary to hedge the market risk created by entering into the block trade. Other market participants would know the SBS transaction was above a certain size, and it may be possible to infer the size or direction of a large trade before the size is publicly disseminated, based on the liquidity premium inferred from the reported trade price. The Commission recognizes that the disclosure that a block trade took place, even without disclosure of the exact size, can still implicate some of the concerns regarding subsequent hedging that were previously discussed. On the other hand, there would still be substantial risk for any other market participant that seeks to take long or short market positions solely to profit from the information that a block trade occurred, due to the uncertainty regarding the true size of the trade. Moreover, disseminating the price in real time could allow all market participants to obtain useful information about the block trade for valuation purposes, even though they would not learn about the full size of the block trade until later.[107] The Commission notes that the approach that it is proposing here is similar to TRACE's handling of block trades.[108]

Unlike TRACE, however, the Commission is proposing a second wave of transaction reporting, which would include the full notional size of the

[105] Proposed Rule 901(c)(1) would require the reporting party to report, in real time, the asset class of the SBS and, if the SBS is an equity derivative, whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the SBS is based.

[106] As an example: Bank DEF wants to purchase ten million shares of Company XYZ and would like to avoid real-time public reporting of the purchase. If Bank DEF purchased those shares on a national securities exchange, the purchase would be reported in real time. However, Bank DEF could instead enter into a total return swap with ten million shares of XYZ as a reference asset and create an economically similar position. If the total return swap, but not the equity security transaction, were afforded a block trade exception under proposed Regulation SBSR, this disparate regulatory treatment might influence market participants' investment choices.

[107] SBS market participants typically value their holdings at the end of the business day. If no information about a block trade were made public until after the end of the business day (for example, if the block trade occurred at 15:00 UTC/noon EST but no public trade report were required until eight hours later, *i.e.,* at 23:00 UTC/8:00 p.m. EST), all market participants would lose a potentially significant input into their valuation methodologies. This could be the case in particular for infrequently traded SBS instruments, where there are few last-sale prints. This would also likely be the case for market participants that hold SBS instruments in notional sizes similar to the undisseminated SBS block trade. A large position might be valued less on a per-unit basis than a smaller position, due to an illiquidity premium. Seeing the price of the block trade in real time could be useful for market participants that must value a larger SBS position, because the price of the reported block trade (even if the exact size is unknown) would also likely reflect an illiquidity premium to some extent.

[108] FINRA rules require member broker-dealers to report transactions in corporate and agency debt securities to TRACE within 15 minutes. FINRA publicly disseminates a transaction report immediately upon receipt of the information. If the par value of the trade exceeds $5 million (in the case of investment grade bonds) or $1 million (in the case of non-investment-grade bonds) the quantity disseminated by TRACE will be either "5 million+" or "1 million+". At no time will TRACE subsequently disseminate the full size of the trade. *See* TRACE User Guide, version 2.4 (last update March 31, 2010), at 50.

block trade, after an appropriate delay. Under proposed Rules 907(b)(1) and (2), all block trades would have at least an eight-hour delay before the full notional size would be disseminated. Proposed Rule 907(b) would establish a cut-off time of 23:00 UTC, which correspond to 6 p.m. EST. Block trades executed on or after 05:00 UTC (which corresponds to midnight EST) and up to 23:00 UTC (6 p.m. EST) would have to have their full notional size disseminated by 07:00 UTC, which corresponds to 2 a.m. EST. Thus, most block trades executed on a given U.S. day would have their full notional sizes disseminated overnight. However, block trades executed on or after 23:00 UTC (6 p.m. EST) and before 05:00 UTC (midnight EST) would instead have their full notional sizes disseminated at 13:00 UTC, which corresponds to 8 a.m. EST of the following U.S. day. If there were only one point in the day when a registered SDR were required to disseminate the full notional sizes, block trades executed a short time before the second wave of dissemination would not benefit from the proposed delay in the dissemination of the notional size. Under the proposed approach, block trades executed during a period that runs roughly from the close of the U.S. business day to midnight EST would have their full sizes disseminated by a registered SDR at a time that corresponds to the opening of business on the next U.S. day.

The Commission preliminarily believes that disseminating the full size of a block trade, albeit with a delay, would further promote price transparency while having only minimal costs. The ability to view the full notional size, although with a delay of between eight and 26 hours,[109] would allow market participants to understand the full scope of activity in the market. At the same time, market participants that execute block trades would have at minimum eight hours to hedge or take other action to minimize their risks before the full size of their trades was disseminated. Based on preliminary discussions with market participants, the Commission believes that the proposed delay of between eight and 26 hours, which in most cases would represent the better part of a business day, would allow sufficient time for the counterparties to the transaction to take follow-up action as needed. The Commission preliminarily believes, therefore, that these time periods strike a reasonable balance between the goals of post-trade transparency and of providing market participants that trade in large size a reasonable opportunity to mitigate their risks.

Finally, proposed Rule 907(b)(3) would provide that, if a registered SDR is in normal closing hours or special closing hours [110] at a time when it would be required to disseminate information about a block trade pursuant to this section, the registered SDR shall instead disseminate information about the block trade immediately upon re-opening. Under proposed Rules 907(b)(1) and (2), a registered SDR could otherwise be required to disseminate the full report of a block trade, including the notional size, at a time when it is closed.

5. No Delay in Reporting Block Trades to Registered SDR

Because the registered SDR, rather than the reporting party, would have the responsibility to determine whether a transaction qualifies as a block trade, the reporting party would be required to report a SBS to a registered SDR or the Commission pursuant to the time frames set forth in Rules 901(c) and (d), regardless of whether the reporting party believes the transaction qualifies for block trade treatment.

6. Block Trade Policies and Procedures

Proposed Rule 907(b)(1) would provide that a registered SDR shall establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SBS instruments reported to the registered SDR. At a minimum, a registered SDR would be required to establish written policies and procedures reasonably designed to: (1) Immediately determine whether a SBS reported to the registered SDR constitutes a block trade and, if so, (2) disseminate information about the block trade in a manner consistent with proposed Rule 902(b).

As noted above, the specific threshold that a registered SDR would have to apply to make the block trade calculations will be established in a future Commission rulemaking.

Request for Comment

The Commission requests comment generally on all aspects of the proposed rules regarding block trades, including the proposed criteria and the proposed exclusions. In particular, the Commission specifically requests comment on the following issues:

109. Do commenters agree with the approach of having a registered SDR calculate and publicize block size thresholds, in accordance with the criteria established by the Commission? Why or why not? If not, what would be an alternative approach?

110. If there is more than one registered SDR for an asset class, how would the Commission ensure that all registered SDRs calculated the same block trade thresholds for the same SBS instrument? How should the Commission address this issue? Is it feasible to expect multiple registered SDRs in the same asset class to obtain each others' market data feeds to obtain the data with which to calculate block trade thresholds?

111. If commenters believe that there would be adverse price impact for traders if all information on block trades was made available in real time, do commenters have any studies or empirical evidence to support that assertion? What would be the long-term effects on the market if all market participants knew the full transaction details of all SBSs in real time? Would this impact liquidity? If so, how?

112. Some participants in the Market Data Roundtable referred to the likelihood of "front running" if all information on block trades were made available in real time. How would front running occur in the SBS market if all the details of block trades were disseminated in real time?

113. How do counterparties hedge large SBS trades? At what notional trade size does it become difficult to hedge a SBS such that a dissemination delay is necessary? How does this vary by asset class? How long does it take to complete a hedge? What characteristics of a SBS instrument or asset class affect the length of time needed to deploy the hedge?

114. Does a counterparty's ability to hedge a trade increase or decrease depending on market characteristics such as trading volume and trading frequency? Does this depend on asset class, and within an asset class does it depend on maturity or other contract characteristics?

115. Do commenters agree that the criteria for determining whether or not a SBS transaction is considered a block trade should be based on a distribution

[109] Market participants would be able to view the full notional size of a SBS transaction no sooner than eight hours and no more than 26 hours after the time of execution. A SBS block trade executed at 05:00 UTC would have its full size disseminated by a registered SDR at 07:00 UTC of the next day, which is 26 hours later. Any other SBS block trade would be disseminated after a shorter delay. For example, a SBS block trade executed at 17:00 UTC also would be disseminated with its full size at 07:00 UTC of the next day, which is 14 hours later. A SBS block trade executed at 04:59:59 would have its full size disseminated by a registered SDR at 13:00 UTC of that same day, just over eight hours later.

[110] *See infra* Section V.E (discussing hours of operation of registered SDRs).

of past trade sizes? Should overall volume also be considered? Should volume or trade sizes in the cash market be considered?

116. Should block trade thresholds be determined with more granularity, such as on a SBS instrument by instrument basis?

117. How often should thresholds be updated? What should be the appropriate look back period for data used to determine thresholds?

118. Is there a preferred formulaic way of computing the thresholds from trade size or other distributions? Should a simple percentile cut-off be chosen? If so, how? Would a standard deviation metric be appropriate?

119. How might trading change as a result of the chosen threshold? Could these provisions be gamed? Would market participants change their trading patterns to purposely skew the distribution to alter the threshold when they are next updated?

120. For any criterion that takes into account trading activity in the SBS instrument, should inter-affiliate transactions or trades resulting from portfolio compressions be excluded? If so, why? Are there other types of SBSs that should be excluded? If so, why? How could those exclusions be defined so as to prevent market participants from inappropriately deeming a SBS as qualifying for an exclusion?

121. Should there be a fixed minimum notional size threshold below which no SBS could be considered a block trade? If so, what should that threshold be and why? Should there be a different fixed minimum threshold for different asset classes or SBS instruments? If so, why? What would those different thresholds be?

122. Do commenters agree with the proposed exclusions from the block trade determination? If so, why or why not? Should other kinds of transactions be prevented from having a block trade exception?

123. Do commenters believe that block trades (however defined) should be treated differently from other trades for purposes of public dissemination? If so, why? If not, why not?

124. What would be the effect of having no or only a short dissemination delay for a block trade report that includes the full notional size? Would it enhance or slow the speed of price discovery and the level of price efficiency in the market? Would it increase or decrease competition among market participants in general, or SBS dealers in particular? Would any short-term increases in the cost of hedging be offset by reductions in the cost of hedging in the longer term?

125. Do commenters agree with the proposed two-step process for public dissemination of a block trade?

126. How likely is it that market participants would be able to infer the size or direction of a large trade before the size is publicly disseminated, based on the liquidity premium inferred from the reported traded price? Is it feasible to remove the liquidity premium component from the price of a large trade, leaving only a normalized price for a standard (non-block) size trade to be reported in real time, with the actual price including the liquidity premium component being reported only at the time that actual trade size is revealed?

127. Would it be preferable to have a single transaction report for a block trade that contains all transaction details, including the notional size, but with a delay in dissemination of the complete trade report? If so, why? What should that delay be? Five minutes? Ten minutes? An hour? Three hours? At the end of the day? Why would this length of time be appropriate?

128. Are there other means by which the dissemination protocol for block trades could effectively not reveal the size of the block trade while still offering the price component in real time? For example, could the block trade be disseminated with a "proxy" size, such as the size of the block trade threshold or a randomized size, with no identifier showing that the trade is a block trade? Even if that approach were to effectively not reveal the true size of the block, would it do so at the cost of creating misinformation in the market?

129. Do commenters believe it is important for market participants to have pricing information from block trades to set end-of-day marks? When are these marks typically set? How valuable would it be in setting end-of-day marks to know the price of a SBS block trade, even without the full size?

130. If the Commission were to adopt a requirement that the price and size of a block trade must be publicly disseminated before the time that market participants typically set marks, would that cause SBS counterparties to avoid executing block trades near that time? For example, assume the Commission were to require that the full transaction details of block trades had to be publicly disseminated by a registered SDR at 21:00 UTC/4:00 p.m. EST, and that even a block trade executed at 3:55 p.m. EST had to be disseminated at 4 p.m. EST. Would this cause market participants to shift block trading earlier or later in the day? If so, would there be any harm in such movement?

131. Do commenters agree with the Commission's proposed times for disseminating the full notional size of block trades? If not, what other times would be appropriate, and why? Would counterparties be able to effectively hedge large SBSs executed toward the end of the day during the time allowed by the proposed rules (*i.e.,* between 6 p.m. and midnight EST)?

132. Do commenters believe it would be more appropriate for a registered SDR to disseminate the notional size of each block trade after a fixed period after the trade report for that SBS transaction is disseminated without the notional size, rather than requiring the registered SDR to disseminate the full trade reports in two "batches" during the day? If so, what would be an appropriate delay for disseminate the full notional size, and why?

133. Under the Commission's proposal, there would be at least an eight-hour delay between the time of execution of a block trade and when the full notional size is required to be disseminated by a registered SDR. Is an eight-hour minimum appropriate? Should that period be longer or shorter? Why?

134. Would the Commission's proposed times for disseminating block trade information with the full notional size included cause any disruptive change in trading patterns or activity for large SBS trades, for example by providing market participants the incentive to move block trading toward the very beginning of the day, or by prompting market participants to avoid trading around the release of block trade information at 07:00 UTC/2 a.m. EST and 13:00 UTC/8 a.m. EST?

135. Would the public dissemination of block trades as proposed allow some market participants to infer the identity of the parties to the transaction or materially reduce market liquidity? If so, how? Can or should there be another means of suppressing the exact size of a block trade?

D. SBS Information That Will Not Be Disseminated

The Commission is proposing Rule 902(c)(1), which would prohibit a registered SDR from disseminating the identity of either counterparty to a SBS, and Rule 902(c)(2), which would prohibit a registered SDR from disseminating, with respect to a SBS that is not cleared at a registered clearing agency and that is reported to a registered SDR, any information disclosing the business transactions and market positions of any person.[111]

[111] *See* 15 U.S.C. 13m(m)(1)(C)(iii) ("With respect to security-based swaps that are not cleared * * * and which are reported to a security-based swap

In addition, proposed Rule 902(c)(3) would prohibit a registered SDR from publicly disseminating any information regarding a SBS reported pursuant to proposed Rule 901(i), which would require participants to report pre-enactment and transitional SBSs.[112] The Commission preliminarily believes that price discovery would not be enhanced by publicly disseminating information about historical SBSs.[113]

Request for Comment

136. Do commenters believe that information that would be disseminated pursuant to proposed Regulation SBSR would disclose the business transactions, identities, or market positions of any person?

137. If so, what revisions to proposed Regulation SBSR do commenters believe would be necessary to avoid disclosing the business transactions, identities, or market positions of any person?

E. Operating Hours of Registered SDRs

1. Continuous Operation

The Dodd-Frank Act does not explicitly address or prescribe the hours of operation of the real-time reporting and dissemination regime. However, to serve the goals of transparency and price discovery, the Commission believes that it is appropriate to implement a system of real-time reporting and dissemination that, in general, operates continuously.[114] Accordingly, proposed Rule 904 would require a registered SDR to design its systems to allow for continuous receipt and dissemination of SBS data, except that a registered SDR would be permitted to establish "normal closing hours." Such normal closing hours may occur only when, in the estimation of the registered SDR, the U.S. markets and other major markets are inactive. In addition, a registered SDR would be permitted to declare, on an *ad hoc* basis, special closing hours to perform routine system maintenance, subject to certain requirements.

The Commission believes there are compelling reasons to adopt this approach. First, the market for SBSs is global, and the Commission believes the public interest is served by requiring continuous real-time dissemination of any SBS transactions that would be required to be reported to a registered SDR, no matter when they are executed. Second, a continuous dissemination regime would reduce the incentive for market participants to defer execution of SBS transactions until after regular business hours to avoid real-time post-trade transparency. Third, the Commission believes that this continuous dissemination regime would be "technologically practicable," and thus consistent with the Dodd-Frank definition of what constitutes real-time dissemination.[115]

2. Normal Closing Hours and Special Closing Hours

Although the Commission believes that continuous operation of a real-time reporting and dissemination regime should be the goal, the Commission recognizes the potential need for a registered SDR to establish normal closing hours to perform necessary system maintenance. Such normal closing hours should occur only when, in the estimation of the registered SDR, the U.S. markets and major foreign markets are inactive. Consequently, proposed Rule 904(a) would allow a registered SDR to establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered SDR would be required to provide reasonable advance notice to participants and to the public of its normal closing hours.[116]

Further, the Commission recognizes that unexpected circumstances could arise that would require a registered SDR to temporarily make unavailable its systems for processing transaction reports and publicly disseminating transaction data. Consequently, proposed Rule 904(b) would permit a registered SDR to declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered SDR would be required, to the extent reasonably possible under the circumstances, to avoid scheduling special closing hours during when, in its estimation, the U.S. market and major foreign markets are most active, and to provide reasonable advance notice of its special closing hours to participants and to the public.

Paragraphs (c) to (e) of proposed Rule 904 would specify requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. During normal closing hours and, to the extent reasonably practicable, during special closing hours, a registered SDR would be required to have the capability to receive and hold in queue transaction data it receives. Immediately upon system re-opening following normal closing hours (or opening following special closing hours, if it were able to hold incoming data in queue), the registered SDR would be required to publicly disseminate any transaction data required to be reported under proposed Rule 901(c) that it received and held in queue. If the registered SDR could not, while it was closed, receive and hold in queue information required to be reported, it would be required, immediately upon resuming normal operations, to send a notice to all participants that it had resumed normal operations but could not, while closed, receive and hold in queue such transaction information. Thereafter, any participant that had an obligation to report information, but was unable to do so because of the registered SDR's inability to receive and hold data in queue, would be required to immediately report the information to the registered SDR.

Regardless of the current operating status of a registered SDR, reporting parties would be required to submit information to the registered SDR under the same standards and permissible timing detailed in proposed Rule 901. If a party that has an obligation to report the transaction data is unable to do so because the registered SDR's system is unable to receive and hold in queue such data, the reporting party would be required to report any information that it was obligated to report immediately after it received a notice that it was possible to do so.

Request for Comment

The Commission requests comment on all aspects of the proposed operating hours for registered SDRs.

138. Do commenters agree with the provisions that would allow registered SDRs to have normal and special closing hours and the proposed process for receipt and dissemination of data during and after such hours?

139. Is it reasonable for the Commission to provide registered SDRs with flexibility to set specific closing

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data repository or the Commission under section 3C(a)(6), the Commission shall require real-time public reporting * * * in a manner that does not disclose the business transactions and market positions of any person."); 15 U.S.C. 13m(m)(1)(E)(i) (requiring that the Commission's rules governing the dissemination of SBS transaction and pricing information "does not identify the participants"). The Commission does not believe that the information that would be disseminated pursuant to proposed Regulation SBSR would disclose the business transactions, identities, or market positions of any person.

[112] *See* proposed Rule 900 (defining "pre-enactment security based swap" and "transactional security-based swap").

[113] *See supra* Section IV.F.

[114] The Commission is aware that one current data repository, Warehouse Trust Company LLC, a subsidiary of DTCC, operates 24 hours a day for six days a week.

[115] *See* 15 U.S.C. 78m(m)(1)(A).

[116] For example, a registered SDR could provide notices to its participants or publicize its normal closing hours in a conspicuous place on its Web site.

times, or should the Commission adopt a rule that specifies hours of operation?

140. Are there alternatives to allowing registered SDRs to close during normal and special closing hours? Would it be feasible for registered SDRs to operate without normal and special closing hours?

F. Procedures for Correcting Errors

Proposed Rule 905 would establish procedures to correct errors in reported and disseminated SBS information. The Commission recognizes that any system for transaction reporting must accommodate the possibility that certain data elements may be incorrectly reported. Proposed Rule 905 would establish error reporting procedures for counterparties and for registered SDRs.

1. Counterparty Reporting Error

Proposed Rule 905(a) would apply where a counterparty discovers an error after a SBS transaction has been reported. A counterparty that was not the reporting party would be required to promptly notify the reporting party of the error. A reporting party that discovers an error or receives notification of an error from its counterparty would be required to promptly submit to the entity to which it provided the original transaction report an amended report pertaining to the original transaction report. If the reporting party reported the initial transaction to a registered SDR, the reporting party must submit an amended report to the registered SDR in a manner consistent with the policies and procedures contemplated by proposed Rule 907(a)(3).[117] The Commission preliminarily believes that it is reasonable to place the duty to submit a correction report on the reporting party, because the reporting party was responsible for submitting the initial transaction report. This approach should establish a clear duty and help to avoid the submission of duplicative error reports.

2. Responsibility of Registered SDR To Correct

Proposed Rule 905(b) outlines the duties of registered SDRs in correcting information and re-disseminating corrected information.[118] If the registered SDR either discovers an error in the SBS information contained in its system or receives notice of an error from a counterparty, the registered SDR would be required to verify the accuracy of the terms of the SBS and, following such verification, promptly correct the information in its system.[119] Proposed Rule 905 would further require that, if the erroneous information contains any information that falls into the categories enumerated in proposed Rule 901(c) as information required to be reported and disseminated in real time, the registered SDR would be required to publicly disseminate a corrected transaction report of the SBS promptly following verification of the trade by the parties to the SBS, with an indication that the report relates to a previously disseminated transaction.[120]

Proposed Rule 907(a)(3) would require a registered SDR to, among other things, establish and maintain written policies and procedures for determining how participants would be required to report corrections of prior reports. The registered SDR would have flexibility to specify the modifiers or indicators to allow reporting parties to submit reports distinguishing corrected trades from new trades and indicating the actual execution date and time.

For example: Counterparty B (the reporting party) notices that there is an error in the reported notional amount of a SBS transaction. Counterparty B then would be required under proposed Rule 905(a) to promptly notify the registered SDR to which it originally reported the trade of the error in the notional amount. Because the notional amount is one of the data elements that must be reported in real time under proposed Rule 901(c), the registered SDR would be required to immediately disseminate a corrected transaction report to the public, with a notation indicating that it is a corrected trade report.

Request for Comment

The Commission requests comment on all aspects of the proposed rules relating to procedures for correcting errors in reported and disseminated SBS information.

141. Are the proposed obligations for submitting error reports sufficiently clear?

142. Are additional requirements necessary? Are the proposed requirements adequate to assure that errors are corrected promptly and corrections are promptly disseminated as appropriate? If not, what additional procedures should be required?

143. Do commenters agree with the proposed approach? Why or why not?

144. Do commenters agree that error reports should be publicly disseminated? Why or why not?

VI. Policies and Procedures of Registered SDRs

In designing a comprehensive system of transaction reporting and post-trade transparency for all SBS—involving a constantly evolving market, thousands of participants, and potentially millions of transactions—the Commission preliminarily believes that it is not necessary or appropriate for it to specify by rule every detail of how this system should operate. On some matters, there may not be a single correct approach for maximizing transparency and price discovery; rather, it might be more important that there be a coordinated approach that all market participants understand and adhere to.

The Commission believes that registered SDRs could play an important role in developing, operating, and improving the system for transaction reporting and post-trade transparency in SBS, as laid out by Congress in the Dodd-Frank Act. Registered SDRs are placed at the center of the market infrastructure, as the Dodd-Frank Act requires all SBSs, whether cleared or uncleared, to be reported to them.[121] The Commission preliminarily believes that some reasonable flexibility should be given to registered SDRs to carry out their functions—by, for example, being able to specify data formats, connectivity requirements, and other protocols for submitting information to them. The Commission's intent is to set out broad principles that registered SDRs and their participants would be required to follow, while providing registered SDRs with flexibility in determining the precise means of doing so.

As discussed more fully below, a registered SDR would be required to establish and maintain certain policies and procedures, including policies and procedures to: (1) Enumerate the specific data elements of SBS or life cycle event that a reporting party must report; (2) specify one or more acceptable data formats, connectivity requirements, and other protocols for submitting information; (3) promptly correct information in its records that is discovered to be erroneous; (4) determine whether and how life cycle events and other SBSs that may not accurately reflect the market should be

[117] *See* proposed Rule 905(a)(2).

[118] *See also* SDR Registration Proposing Release, *supra* note 6 (proposing Rule 13n–5 under the Exchange Act).

[119] *See* proposed Rule 905(b)(1). The Commission is also proposing to require the registered SDR to establish and maintain written policies and procedures that, among other things, specify how reporting parties are to report corrections to previously submitted information and how information in the records of the SDR, upon being discovered to be erroneous, is to be corrected. *See* proposed Rule 907(a)(3); *infra* Section VI.A (discussing the policies and procedures of registered SDRs).

[120] *See* proposed Rule 905(b)(2).

[121] *See* 15 U.S.C. 13m(m)(1)(G).

disseminated; (5) assign or obtain certain unique identifiers; (6) receive information concerning a participant's ultimate parent and affiliated entities; and (7) handle block trades.

A registered SDR also would be required to make its policies and procedures required by proposed Regulation SBSR publicly available on its Web site.[122] This would allow all interested parties to understand how the registered SDR is utilizing the flexibility it has in operating the transaction reporting and dissemination system.[123] The Commission anticipates that participants might make suggestions to the registered SDR for altering and improving that system, or developing new policies and procedures to address new products or circumstances, consistent with the principles set out in proposed Regulation SBSR. In conclusion, the Commission preliminarily believes that requiring registered SDRs to adopt and maintain policies and procedures, as required under proposed Rule 907, would improve compliance with proposed Regulation SBSR.

A. Elements of Policies and Procedures

Proposed Rule 907(a)(1) of Regulation SBSR would require a registered SDR to establish and maintain written policies and procedures that enumerate the specific data elements of a SBS or a life cycle event that a reporting party must report. These data elements would be required to include, at a minimum, those specified in proposed Rules 901(c) and (d). The Commission expects that the policies and procedures adopted under proposed Rule 907(a)(1) would explain to reporting parties how to report if all the SBS transaction data required by Rules 901(c) and (d) is being reported simultaneously, and how to report if responsive data are being provided at separate times.[124]

Proposed Rule 907(a)(2) would require a registered SDR to establish and maintain written policies and procedures that specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information. The Commission preliminarily believes that a registered SDR should have reasonable flexibility to design its systems and develop ways for participants to input information into those systems.

Proposed Rule 907(a)(3) would require a registered SDR to establish and maintain written policies and procedures for specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any report required to be disseminated by proposed Rule 905(b)(2), which would denote that the report relates to a previously disseminated transaction. There could be a number of acceptable ways to carry out the general directive to correct erroneous information, and reasonable flexibility should be afforded a registered SDR in this regard. Use of transaction IDs assigned by the registered SDR would facilitate this process, as this would offer a clear way for participants and the registered SDR to refer to an earlier transaction.[125] The Commission preliminarily believes that a registered SDR should be required to have an appropriate means to confirm that the information provided by the reporting party is indeed correct.

Finally, the policies and procedures required by proposed Rule 907(a)(3) would have to address applying an appropriate indicator to any new transaction report required by proposed Rule 905(b)(2) that the report relates to a previously disseminated transaction. It is essential that market observers understand that the transaction report triggered by proposed Rule 905 does not represent a new transaction, but merely a correction to a previous transaction. Without some kind of indication to that effect, market observers could misunderstand the true state of the market. Therefore, the Commission preliminarily believes that the registered SDR must apply an appropriate indication to the publicly disseminated transaction report.

Proposed Rule 907(a)(4) would require a registered SDR to establish and maintain written policies and procedures describing how reporting parties shall report—and, consistent with the enhancement of price discovery, how the registered SDR shall publicly disseminate—reports of, and adjustments due to, life cycle events; SBS transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market. As noted above, all SBS transactions must be reported to a registered SDR, pursuant to proposed Rules 901(c) and (d). However, some SBSs might not involve arm's-length negotiations that reflect competitive price discovery.[126] Similarly, there might be no price discovery in the case of an assignment where the new counterparty to which a SBS is assigned has no opportunity to negotiate a different price. Proposed Rule 907(a)(4) would provide some flexibility to a registered SDR regarding how to publicly disseminate transaction reports for such SBSs. The registered SDR could determine in some cases that an indication should be provided that explains the circumstances. Publicly disclosed policies and procedures would permit market observers to understand which indicators applied to which circumstances. The Commission expects that the policies and procedures would direct reporting parties to provide additional information to the registered SDR about the existence of such circumstances. Furthermore, the Commission preliminarily believes that all transactions reported late (*i.e.,* over 15 minutes after time of execution) should bear an indicator so that market participants know that the transaction was reported late. While there is likely to be value in disseminating the transaction report, all market participants should understand that the report is no longer timely and thus would not reflect the current market at the time of dissemination.

Finally, the policies and procedures required by proposed Rule 907(a)(4) would be required to address applying an appropriate indicator to reports of, and adjustments due to, life cycle events. As with corrected transaction reports, it is essential that market observers understand that the transaction report triggered by a life cycle event does not represent a new transaction, but merely a change to the terms of a previously executed SBS. Without an indicator to that effect, market observers could misunderstand the true state of the market. Therefore, the Commission preliminarily believes that the registered SDR must apply an appropriate indicator to the publicly disseminated transaction report.

[122] *See* proposed Rule 907(c).

[123] *See* SDR Registration Proposing Release, *supra* note 6, proposed Rule 13n–10. Furthermore, proposed Form SDR would require all of the policies and procedures required by proposed Regulation SBSR be submitted by a data repository registering with the Commission. *See* SDR Registration Proposing Release, *supra* note 6, Exhibit GG to proposed Form SDR.

[124] In the latter case, the Commission expects that the registered SDR would provide the reporting party the transaction ID after the reporting party reports the information required by proposed Rule 901(c). The reporting party would then include the transaction ID with its submission of data required by proposed Rule 901(d), thereby allowing the registered SDR to match the real-time report and the subsequent regulatory report.

[125] *See supra* Section IV.E.2.

[126] This could be the case, for example, with an inter-affiliate transfer.

Proposed Rule 907(a)(5) would require a registered SDR to establish and maintain written policies and procedures for assigning: (1) A transaction ID to each SBS that is reported to it; and (2) UICs established by or on behalf of an IRSB (or, if such UICs are not yet able to be so assigned, for assigning UICs in a consistent manner using its own methodology). Proposed Rule 907(a)(6) would require a registered SDR to establish and maintain written policies and procedures for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using ultimate parent IDs and participant IDs. The Commission expects that the registered SDR's policies and procedures would address the relationship between itself and an IRSB, and how UICs could be obtained from the IRSB or an agent or other person acting on its behalf. Furthermore, the Commission expects that, if an IRSB exists and the registered SDR is using UICs assigned by that IRSB or on its behalf, the registered SDR's policies and procedures should explain how a participant could obtain applicable UICs from the IRSB. To the extent that the IRSB cannot provide certain UICs required of a participant by proposed Regulation SBSR, the registered SDR's policies and procedures would be required to explain the process by which a participant could obtain such UICs from the registered SDR.

Proposed Rule 907(d) would require a registered SDR to review and, as necessary, update its policies and procedures required by proposed Regulation SBSR at least annually, and to indicate the date on which they were last reviewed. Periodic review should help ensure that a registered SDR's policies and procedures remain well-functioning over time. Indicating the date on which the policies and procedures were last reviewed would allow regulators and market participants to understand which version of the policies and procedures are current. The Commission is proposing recordkeeping and retention rules for registered SDRs in a separate rulemaking.[127] Prior versions of a registered SDR's policies and procedures would be records under that proposed rule, and thus would be required to be retained in accordance with those rules. Access to these records would permit the Commission, when conducting a review of past actions, to understand what policies and procedures were in force at the time.

Proposed Rule 907(e) would require a registered SDR to have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to proposed Regulation SBSR and the registered SDR's policies and procedures thereunder.[128] Under Title VII of the Dodd-Frank Act, the Commission is responsible for regulating and overseeing the SBS market. The Commission preliminarily believes that, to carry out this responsibility, it could be valuable to obtain information from each registered SDR related to the timeliness, accuracy, and completeness of data reported to it. Required data submissions that are untimely, inaccurate, or incomplete could compromise the regulatory data that the Commission would utilize to carry out its oversight responsibilities. Furthermore, required data submissions that are untimely, inaccurate, or incomplete could diminish the value of publicly disseminated reports that promote transparency and price discovery. Information or reports provided to the Commission by a registered SDR related to the timeliness, accuracy, and completeness of data could assist the Commission in examining for compliance with proposed Regulation SBS and in bringing enforcement or other administrative actions as necessary and appropriate.

Request for Comment

The Commission requests comment on all aspects of the proposed policies and procedures for registered SDRs.

145. Do commenters agree, overall, with the proposed policies and procedures for registered SDRs? Why or why not?

146. Should proposed Rule 907 specify more detailed elements to be included in the required policies and procedures? If so, what should those elements be? Or, are the proposed policies and procedures too prescriptive? If so, in what way(s)?

147. Should a registered SDR have flexibility to specify acceptable data formats, connectivity requirements, and other protocols for submitting information? Why or why not? Are there disadvantages to this approach? If so, how should they be addressed?

148. Should all acceptable data formats be open-source structured data formats? What data formats are currently in use by SDRs? Would they qualify as open-source structured data formats?

149. Assuming special indicators on certain publicly disseminated trade reports may be necessary, do commenters agree that a registered SDR should have the flexibility to determine and apply those indicators? If not, can commenters suggest another system for assigning relevant indicators?

150. What kinds of special circumstances would warrant indicators for public dissemination? What should those indicators be? How should they be reflected on the publicly disseminated trade report?

151. Should inter-affiliate transactions be publicly disseminated with an indicator? Should they be disseminated at all? Why or why not?

152. Should portfolio compressions and terminations be publicly disseminated with an indicator? Should they be disseminated at all? Why or why not?

153. Should a registered SDR have the flexibility to determine whether a SBS transaction does not accurately reflect the market or would not enhance price discovery if disseminated? If so, how should the registered SDR exercise such flexibility? What criteria should it use? What are examples of transactions that commenters believe should be reported to a registered SDR but should not be publicly disseminated? Why should they not be publicly disseminated?

154. Multi-lateral netting and portfolio compression are post-trade processes designed to reduce gross exposure and leave only net exposure. These processes typically entail the termination of open contracts and the establishment of new contracts representing only the net position. How, if at all, should SBSs related to multi-lateral netting and portfolio compression be reported to and disseminated by a registered SDR? What if the netting involves a payment that is determined by market value?

155. How should a registered SDR's policies and procedures address the use of UICs assigned under the auspices of a voluntary consensus standards body?

156. What are the costs for registered SDRs to adopt and implement the proposed policies and procedures? What are the benefits of requiring registered SDRs to adopt and implement these policies and procedures?

157. Should a data repository seeking to register with the Commission be

[127] *See* SDR Registration Proposing Release, *supra* note 6, proposed Rule 13n-7 under the Exchange Act.

[128] *See id.,* proposed Rule 13n–8 under the Exchange Act (requiring every registered SDR to promptly report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission its duties under the Exchange Act and the rules and regulations thereunder).

required to provide the policies and procedures required by proposed Rule 907 as part of its Form SDR submission?

VII. Policies and Procedures of SBS Dealers and Major SBS Participants

For the proposed SBS reporting requirements established by the Dodd-Frank Act to achieve the objective of enhancing price transparency and providing regulators with access to data to help carry out their oversight responsibilities, the information that participants provide to registered SDRs must be reliable. Accordingly, proposed Rule 906(c) would require a participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with the SBS transaction reporting obligations set forth in proposed Regulation SBSR and the policies and procedures of any registered SDR in which it is a participant. Such policies and procedures are intended to provide a system of controls that facilitate complete and accurate reporting of SBS information by these participants, consistent with their obligations under the Dodd-Frank Act and proposed Regulation SBSR.

The Commission believes that proposed Rule 906(c) should result in greater accuracy and completeness of reported SBS transaction data. Without written policies and procedures, compliance with reporting obligations may depend too heavily on key individuals or unreliable processes. The Commission believes that requiring participants that are SBS dealers or major SBS participants to establish written policies and procedures should promote clear, reliable reporting that can continue independent of any specific individuals. The Commission further believes that requiring such participants to adopt and maintain policies and procedures relevant to their reporting responsibilities, as required under proposed Rule 906(c), would help to improve the degree and quality of overall compliance with the reporting requirements set out in proposed Regulation SBSR.

The policies and procedures required by proposed Rule 906(c) should be designed to foster compliance with the real-time reporting requirements specified in proposed Rule 901(c), as well as the additional reporting requirements specified in proposed Rules 901(d) and (e). These policies and procedures, among other things, should address: (1) The reporting process and designation of responsibility for reporting SBS transactions; (2) the process for systematizing orally negotiated SBS transactions; (3) OMS outages or malfunctions, and when and how backup systems are to be used in connection with required reporting; (4) verification and validation of all information relating to SBS transactions reported to a registered SDR; (5) a training program for employees responsible for SBS transaction reporting; (6) control procedures relating to SBS transaction reporting and designation of personnel responsible for testing and verifying such policies and procedures; and (7) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by proposed Regulation SBSR on behalf of the entity.[129]

Each participant that is a SBS dealer or major SBS participant also would be required to review and, as needed, update its policies and procedures at least annually.[130] Periodic review should help ensure that a participant's policies and procedures remain well functioning over time.

The value of requiring policies and procedures in promoting regulatory compliance is well-established. For example, internal control systems have long been used to strengthen the integrity of financial reporting. Congress recognized the importance of internal control systems in the Foreign Corrupt Practices Act, which requires public companies to maintain a system of internal accounting controls.[131] Broker-dealers also must maintain policies and procedures for various purposes.[132] The Commission preliminarily believes that requiring participants that are SBS dealers or major SBS participants to adopt and maintain policies and procedures designed to promote compliance with proposed Regulation SBSR and the policies and procedures of any registered SDR of which it is a participant would be consistent with Congress's goals in adopting the Dodd-Frank Act.

Request for Comment

The Commission requests comment on all aspects of the proposed requirement that participants that are SBS dealers or major SBS participants establish policies and procedures.

158. Do commenters think proposed Rule 906(c) is necessary? Would SBS dealers and major SBS participants otherwise implement written policies and procedures to ensure compliance with the reporting obligations in proposed Regulation SBSR?

159. Should proposed Rule 906(c) specify elements to be included in the required policies and procedures, such as those discussed above? If so, what elements should be included in the proposed rule, and why?

VIII. Jurisdictional Matters

Proposed Rule 908 is designed to clarify the application of proposed Regulation SBSR to cross-border SBS transactions and to non-U.S. persons.[133]

A. When is a SBS subject to Regulation SBSR?

Proposed Rule 908(a) would require a SBS to be reported if the SBS: (1) Has at least one counterparty that is a U.S. person; (2) was executed in the United States or through any means of interstate commerce; or (3) was cleared through a registered clearing agency having its principal place of business in the United States. In addition, any SBS that is required to be reported to a registered SDR pursuant to proposed Rule 908(a) also would be required to be publicly disseminated by the registered SDR. The Commission preliminarily believes that, if there are sufficient jurisdictional ties to the United States to warrant reporting of the SBS, other market participants should have knowledge of the SBS transaction.

The Commission preliminarily believes that, if a U.S. person executes a SBS anywhere in the world, that SBS should be reported to a registered SDR, pursuant to proposed Regulation SBSR. Because the U.S. person is assuming risk, U.S. regulators have an interest in ensuring that they have appropriate knowledge of the transaction. The Commission notes that it is proposing to define "U.S. person" in proposed Rule 900 to mean "a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of

[129] *See supra* Section II.B (noting that proposed Rule 901 would not prohibit a reporting party from having a third-party agent carry out reporting duties on its behalf).

[130] *See* proposed Rule 906(c).

[131] *See* 15 U.S.C. 78m(b)(2)(B).

[132] *See, e.g.,* FINRA Conduct Rule 3010(b) (requiring FINRA member broker-dealers to establish and maintain written procedures "that are reasonably designed to achieve compliance with applicable securities laws and regulations, and the applicable Rules of [the NASD]"; FINRA Conduct Rule 3012 (requiring FINRA member broker-dealers to establish and maintain written supervisory procedures to ensure that internal policies and procedures are followed and achieve their intended objectives).

[133] *See* proposed Rule 900 (defining "U.S. person" to mean a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of business in the United States).

business in the United States." The Commission intends for this proposed definition to include branches and offices of U.S. persons. Because a branch or office has no separate legal existence under corporate law, the branch or office would be an integral part of the U.S. person itself.

A SBS also would have to be reported if the SBS were executed in the United States or through any means of interstate commerce. For example, even if both counterparties are not U.S. persons, U.S. regulators have a strong interest in having knowledge of and being able to regulate any activity conducted within the United States or through any means of interstate commerce.

Under proposed Rule 908(a)(3), a SBS would have to be reported pursuant to proposed Regulation SBSR—even if both counterparties are not U.S. persons—if the SBS were cleared through a clearing agency having its principal place of business in the United States. It is possible that two counterparties, neither of whom is a U.S. person, could execute a SBS outside the United States, but clear the SBS through a clearing agency having its principal place of business in the United States. The Commission preliminarily believes that such SBS should be reported to a registered SDR. If a SBS is cleared by a clearing agency having its principal place of business in the United States, U.S. regulators should have access to information regarding the SBS through a registered SDR.[134] Moreover, if non-U.S. persons determined to clear a SBS through a clearing agency having its principal place of business in the United States, this suggests that the clearing agency has made the SBS eligible for clearing because at least some U.S. counterparties might wish to trade the SBS as well. Requiring the SBS to be reported to a registered SDR also would cause a transaction report of the SBS to be publicly disseminated, thus promoting price discovery for market participants in the United States and elsewhere.

It is possible that there could be a clearing agency registered with the Commission under Section 17A of the Exchange Act[135] but having its principal place of business outside the United States. Although that clearing agency might service U.S. persons, it also would likely provide clearing services to many non-U.S. persons. The Commission does not intend for proposed Regulation SBSR to apply to such non-U.S. persons solely because they clear a SBS through a clearing agency registered with the Commission but not having its principal place of business in the United States.[136] However, proposed Regulation SBSR would apply with respect to that SBS if either counterparty were a U.S. person, or if the SBS had been executed in the United States or through any means of interstate commerce (including by clearing through a clearing agency having its principal place of business in the United States).

It should be noted that a registered SDR could receive reports of foreign SBS transactions that are not required to be reported pursuant to proposed Rule 908(a). The registered SDR may determine to publicly disseminate reports of such foreign SBS transactions, but would not be required to do so by proposed Regulation SBSR.

B. When is a counterparty to a SBS subject to Regulation SBSR?

Proposed Rule 908(b) would provide that, notwithstanding any other provision of Regulation SBSR, no counterparty to a SBS would incur any obligation under Regulation SBSR unless it is: (1) A U.S. person; (2) a counterparty to a SBS executed in the United States or through any means of interstate commerce; or (3) a counterparty to a SBS cleared through a clearing agency having its principal place of business in the United States. For the reasons discussed above, the Commission preliminarily believes that, if a U.S. person executes a SBS anywhere in the world, that U.S. person should become subject to Regulation SBSR.

Non-U.S. persons who are counterparties to U.S. persons could, therefore, have SBSs to which they are counterparties reported to and held by a registered SDR. If none of these SBSs were executed in the United States or through any means of interstate commerce, however, the non-U.S. person would not become a "participant" of the registered SDR and would not become subject to proposed Regulation SBSR.[137] Thus, the non-U.S. person would not have to provide any UICs pursuant to proposed Rule 906(a) or parent and affiliate information to a registered SDR pursuant to proposed Rule 906(b).

C. An Example

Assume that X (a U.S. bank) enters into an SBS with Y (a Japanese bank). The SBS is effected in Japan, involves no means of interstate commerce, and is not cleared by a clearing agency having its principal place of business in the United States. Because the SBS has at least one counterparty that is a U.S. person, proposed Rule 908(a)—which describes when an SBS is *not* required to be reported because it is outside the jurisdiction of the Exchange Act—would not apply. Therefore, the SBS must be reported to a registered SDR. X would be the reporting party, as proposed Rule 901(a)(1) provides that, where only one counterparty to an SBS is a U.S. person, the U.S. person shall be the reporting party. X also would be a participant because it is a U.S. person that is a counterparty to an SBS that is required to be reported to a registered SDR. However, Y would not be a participant under proposed Rule 900, and would incur no obligations under proposed Regulation SBSR. Although the SBS is required to be reported to a registered SDR, the SBS was not executed in the United States or through any means of interstate commerce, or cleared through a clearing agency having its principal place of business in the United States. Thus, the Commission anticipates that there would be some SBSs reported to and captured by a registered SDR where only one counterparty of the SBS is a participant.

IX. Fair and Non-Discriminatory Access to SBS Market Data

A. SBS Market Data Disseminated by Registered SDRs

As noted above, the Commission preliminarily believes that post-trade transparency could spur significant improvements in the SBS market. Some of the benefits could include greater price competition, lower transaction

[134] While U.S. regulators also would have access to information about the SBS through the U.S. clearing agency, requiring the SBS to be reported to a registered SDR would reduce the fragmentation of the regulatory data.

[135] 15 U.S.C. 78q–1.

[136] For example, assume that Clearing Agency A has its principal place of business in an E.U. member state, but is also registered as a clearing agency in the United States under Section 17A of the Exchange Act because it has sufficient contacts with U.S. participants to require registration under Section 17A. Assume further that Counterparty X executes a SBS with Counterparty Y, both X and Y are each domiciled in an E.U. member state, the SBS is executed in an E.U. member state and does not involve any means of interstate commerce in the United States. Under proposed Rule 908, this SBS would not be required to be reported to a registered SDR solely because it was cleared by a clearing agency registered under Section 17A.

[137] *See* proposed Rule 900 (defining "participant" as (1) A U.S. person that is a counterparty to an SBS that is required to be reported to a registered SDR; or (2) A non-U.S. person that is a counterparty to an SBS that is (i) required to be reported to a registered SDR; and (ii) that is executed in the United States or through any means of interstate commerce, or cleared through a clearing agency having its principal place of business in the United States).

costs, enhanced liquidity, and improved ability of market participants to value their positions. Therefore, fair access to last-sale data appears critical—particularly since registered SDRs would collectively have data on all SBSs executed in the market. The Commission preliminarily believes that market observers should not be forced to pay excessive fees or be subject to unfair usage restrictions imposed by registered SDRs. The Commission therefore seeks to ensure that these data feeds would be available to all market observers on terms that are fair and reasonable and not unreasonably discriminatory.

In a separate rulemaking proposal regarding the registration and regulation of SDRs being issued today, the Commission is proposing rules that would require SDRs to comply with certain core principles. To comply with these core principles, an SDR would be required, among other things, to establish and enforce clearly stated and objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data that would be disseminated by the SDR, as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data could be submitted to the SDR, and third-party service providers that seek to connect or link with the SDR.[138] In addition, an SDR would be required to establish policies and procedures for reviewing any prohibition or limitation of any person's access to services offered, directly or indirectly, or data maintained and disseminated by the SDR, and—if it finds that the person has been discriminated against unfairly—granting to such person access to its services or data.[139]

A registered SDR also would become subject to certain provisions of Section 11A of the Exchange Act[140] because it would be a SIP, as defined by Section 3(a)(22)(A) of the Exchange Act.[141] Section 11A(c)(1) of the Exchange Act[142] provides that the Commission may prescribe rules applying to SIPs (among other entities) that would require them (among other things) to assure "the fairness and usefulness of the form and content" of the information that they disseminate,[143] and to assure "all other persons may obtain on terms which are not unreasonably discriminatory" the transaction information published or distributed by SIPs.[144] Section 11A(c)(1) applies regardless of whether a SIP is registered with the Commission as such.

Section 11A(b)(1) of the Exchange Act[145] provides that a SIP not acting as the "exclusive processor"[146] of any information with respect to quotations for or transactions in securities is exempt from the requirement to register with the Commission as a SIP unless the Commission, by rule or order, determines that the registration of such SIP "is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of [Section 11A]." Requiring a registered SDR to register with the Commission as a SIP would subject that entity to Section 11A(b)(5) of the Exchange Act,[147] which provides that a registered SIP must notify the Commission whenever it prohibits or limits any person's access to its services. Upon its own motion or upon application by any aggrieved person, the Commission could review the registered SIP's action.[148] If the Commission finds that the person has been discriminated against unfairly, it could require the SIP to provide access to that person.[149] Section 11A(b)(6) of the Exchange Act also provides the Commission authority to take certain regulatory action as may be necessary or appropriate against a registered SIP.[150]

The Commission preliminarily believes that the additional authority over a registered SDR/SIP provided by Sections 11A(b)(5) and 11A(b)(6) of the Exchange Act would help ensure that these entities offer their SBS market data on terms that the Commission believes would be fair and reasonable and not unreasonably discriminatory. Therefore, the Commission preliminarily believes that the registration of SDRs as SIPs would be necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of Section 11A of the Exchange Act. Section 11A of the Exchange Act establishes broad goals for the development of the securities markets and charges the Commission with establishing rules and policies that are designed to further these objectives. Section 11A(a) states, among other things, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions; the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; and an opportunity for investors' orders to be executed without the participation of a dealer. SIP registration could assist in achieving these objectives in the still-developing SBS market. Therefore, the Commission preliminarily believes that the registration of SDRs as SIPs would be necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of Section 11A. Accordingly, the Commission is proposing Rule 909, which would require a registered SDR to register with the Commission as a SIP.[151]

B. SBS Market Data Disseminated by Other Market Participants

The measures described above are designed to ensure that SBS market data

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[138] *See* proposed Rule 13n–4(c)(1)(iv) under the Exchange Act.

[139] *See* proposed Rule 13n–4(c)(1)(v) under the Exchange Act.

[140] 15 U.S.C. 78k–1.

[141] 15 U.S.C. 78c(a)(22)(A) (defining SIP as "any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations"). SBSs are securities under the Exchange Act. *See* 15 U.S.C. 78c(a)(10). Further, pursuant to proposed Regulation SBSR, a registered SDR would collect SBS transaction reports from participants and participate in the distribution of such reports and, thus, would be a SIP for purposes of the Exchange Act.

[142] 15 U.S.C. 78k–1(c)(1).

[143] 15 U.S.C. 78k–1(c)(1)(B).

[144] 15 U.S.C. 78k–1(c)(1)(D).

[145] 15 U.S.C. 78k–1(b)(1).

[146] 15 U.S.C. 78c(a)(22)(B) (defining "exclusive processor" as any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (1) transactions or quotations on or effected or made by means of any facility of such exchange or (2) quotations distributed or published by means of any electronic system operated or controlled by such association).

[147] 15 U.S.C. 78k–1(b)(5).

[148] *See* 15 U.S.C. 78k–1(b)(5)(A).

[149] *See* 15 U.S.C. 78k–1(b)(5)(B).

[150] *See* 15 U.S.C. 78k–1(b)(6) (providing that the Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered SIP or suspend for a period not exceeding 12 months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such SIP, and that such SIP has violated or is unable to comply with any provision of this title or the rules or regulations thereunder).

[151] A registered SDR would register as a SIP by filing (existing) Form SIP with the Commission.

disseminated by registered SDRs is available to the public on terms that are fair and reasonable and not unreasonably discriminatory. This is particularly important since all SBS must be reported to a registered SDR,[152] and registered SDRs exclusively would have the responsibility under proposed Regulation SBSR to publicly disseminate SBS transaction data to the public.

Nevertheless, other private sources of market data reflecting subsets of the SBS market could arise.[153] Differences in access to that market data—for example, if some market participants could obtain the data sooner than others—could create an unfair competitive landscape. Therefore, the Commission is proposing Rule 902(d), which would impose a partial and temporary restriction on sources of SBS market data other than registered SDRs. Proposed Rule 902(d) would provide that no person (other than a registered SDR) shall make available to one or more persons (other than a counterparty) a transaction report of a SBS before the earlier of: (1) 15 minutes after execution of the SBS; or (2) the time that a registered SDR publicly disseminates a report of that SBS.

Under proposed Rule 902(d), the temporary restriction on other market participants that may wish to disseminate information relating to a SBS transaction would last no longer than 15 minutes. Under proposed Regulation SBSR, a transaction report of a SBS would be expected to be publicly disseminated within 15 minutes of execution. The Commission preliminarily believes that it is not necessary or appropriate to require other sources of market data to withhold dissemination of a transaction report beyond 15 minutes if a registered SDR is not able to do so in a timely fashion. Proposed Rule 902(d) would, however, permit the transfer of information of a SBS before dissemination by a registered SDR to a counterparty to that SBS. Therefore, one counterparty would be permitted to pass details of the SBS to the other counterparty, or a SB SEF on which the SBS was executed could pass details of the SBS to either or both of the counterparties.

By proposing Rule 902(d), the Commission seeks to balance the goal of promoting robust and fair competition among all market participants—by allowing them to view the same comprehensive source of SBS market data at the same time—with that of allowing market participants to devise new value-added market data products.

Request for Comment

The Commission requests comment on all aspects of its proposal relating to fair and non-discriminatory access to SBS market data. In particular:

160. Do commenters have any potential concerns with market participants' access to data disseminated by registered SDRs? If so, what steps should the Commission do to address them?

161. Do commenters agree with the proposal to require registered SDRs to register with the Commission as SIPs? Why or why not?

162. Would SIP registration entail costs and burdens that are unreasonable or unnecessary in light of the requirements associated with SDR registration? What additional burdens, if any, would be associated with SIP registration?

163. In the SDR Registration Proposing Release, the Commission is proposing a Form SDR that is similar to but separate from existing Form SIP. Should the Commission combine Forms SIP and Form SDR such that an SDR would register as a SIP and SDR using only one form? Or should the elements necessary for registration as an SDR be a supplement to Form SIP? Are there any specific items on Form SIP that should be added to Form SDR that would help to facilitate the registration process?

164. Would it be beneficial for aggrieved persons to have the ability to request that the Commission review a registered SDR's prohibition or limitation on access its services, as contemplated by Section 11A(b)(5) of the Exchange Act? Are there any concerns with applying Section 11A(b)(5) to registered SDRs?

165. Are there additional means by which the Commission can or should attempt to ensure that the market data fees and usage restrictions imposed by registered SDRs are fair and reasonable and not unreasonably discriminatory? If so, please describe.

166. Should market participants other than a registered SDR be prohibited from distributing their SBS market data before transactions are disseminated by a registered SDR? Why or why not?

167. Do commenters anticipate that market participants other than registered SDRs will seek to sell SBS market data? Do commenters have a view as to whether those additional market data products would compete with or complement the required market data feed from registered SDRs?

168. Would proposed Rule 902(d) unnecessarily inhibit competition and innovation in the provision of value-added market data services or products? Please be specific in your response.

169. Are there alternative means to better ensure that all market participants have full and fair access to SBS market data other than placing a restriction on sources other than the registered SDRs? If so, what are they and why would they be preferable to the proposal?

170. Would competitive forces act to ensure that all market participants have full and fair access to SBS market data?

171. If commenters agree with proposed Rule 902(d), is 15 minutes an appropriate length to restrict market participants other than registered SDRs from disseminating SBS transaction data? Do commenters think that period is too long or too short? Please be specific in your response.

172. Should market participants other than registered SDRs that publicly disseminate SBS transaction information be subject to the same requirements regarding dissemination of block trades as registered SDRs?

X. Implementation Timeframes

Proposed Rule 910 is designed to provide clarity as to SBS reporting and dissemination timelines and to establish a phased-in compliance schedule for those subject to proposed Regulation SBSR. The Commission acknowledges that the system for reporting and dissemination described in proposed Regulation SBSR would take a significant amount of time and resources to implement effectively. While the Commission is committed to fully implementing Congress's directive to require real-time public reporting of all SBSs, market participants will need a reasonable period in which to acquire or configure the necessary systems, engage and train the necessary staff, and develop and implement the necessary policies and procedures to implement the proposed rules. The Commission preliminarily believes that the proposed compliance timeframes described below should provide sufficient time for reporting parties and SDRs to make the necessary technological and other preparations needed to begin reporting and disseminating SBS information, respectively, as required under proposed Regulation SBSR.

A. Compliance Schedule

The Commission is proposing a phased-in compliance schedule, with respect to a SDR that registers with the Commission, as follows:

[152] *See* 15 U.S.C. 78m(m)(1)(G).

[153] For example, a SB SEF would have information about SBSs executed on its systems and could find that commercial opportunities exist to sell such information.

• *Reporting of pre-enactment SBSs,* no later than January 12, 2012.

Proposed Rule 910(a) would require reporting parties to report to a registered SDR any pre-enactment SBSs subject to reporting under proposed Rule 901(i) no later than January 12, 2012 (180 days after the effective date of the Dodd-Frank Act).[154] Proposed Rule 900 would define pre-enactment SBS to mean any SBS executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act), the terms of which had not expired as of that date. The Commission notes that Section 3C(e)(1) of the Exchange Act[155] requires SBSs entered into before the date of enactment of Section 3C to be reported to a registered SDR or the Commission no later than 180 days after the effective date of Section 3C (*i.e.,* no later than January 12, 2012). The proposed timeframe would help the Commission obtain relevant information about SBS transactions necessary to prepare reports required by the Dodd-Frank Act. Further, proposed Rule 910 would help promote timely implementation of Regulation SBSR, and thereby facilitate achievement of the goals articulated in the Dodd-Frank Act.

• *Phase 1,* six months after the registration date (*i.e.,* the effective reporting date):[156] Reporting parties shall begin reporting, pursuant to proposed Rule 901, all SBS transactions executed on or after the effective reporting date; reporting parties also shall report to the registered SDR any transitional SBSs;[157] SBS dealers and major SBS participants shall comply with proposed Rule 906(c);[158] participants and the registered SDR must comply with proposed Rule 905[159] (except with respect to dissemination) and proposed Rules 906(a) and (b).[160]

The Commission preliminarily believes that, before reporting parties and other participants could be expected to comply with proposed Regulation SBSR, they must first know the policies and procedures of the registered SDR that would receive and hold transaction information regarding their SBSs.[161] Phase 1 would provide time for SBS dealers and major SBS participants to establish their own policies and procedures, and implement necessary systems changes, for complying with proposed Regulation SBSR and the policies and procedures of the registered SDR. On the effective reporting date, participants would be required to begin reporting SBSs to the registered SDR in a manner consistent with proposed Rule 901, including providing the real-time reports required by proposed Rule 901(c) and the additional, regulatory SBS information required by proposed Rule 901(d). At that time, however, the registered SDR would not yet publicly disseminate any transaction reports.

Also on the effective reporting date, the registered SDR would be required to begin preparing reports to each participant of any missing UICs, and any participant receiving such a report would have to begin providing the missing UICs to the registered SDR. The registered SDR and its participants also would become subject to the error correction requirements of proposed Rule 905 at this time, except that the registered SDR would not yet be required to publicly disseminate any corrected transaction reports (since it would not have disseminated a report of the initial transaction).

Finally, the Commission notes that proposed Rules 901(i) (establishing reporting requirements for pre-enactment and transitional SBSs), 910(a) (requiring the reporting of pre-enactment SBSs by January 12, 2012), and 910(b)(2)(i) (requiring the reporting of transitional SBSs by the effective reporting date) are together designed to assure that a registered SDR would obtain a complete view of each participant's open SBS positions by the time that the registered SDR is about to both receive and publicly disseminate transaction reports of SBSs.

• *Phase 2,* nine months after the registration date: *Wave 1* of public dissemination; the registered SDR would be required to comply with proposed Rules 902 and 905 (with respect to dissemination of corrected transaction reports) for 50 SBS instruments.

Nine months after the registration date and three months after the effective reporting date, the registered SDR would be required to begin disseminating transaction reports as follows: The registered SDR, in consultation with the Commission's staff, would select 50 SBS instruments for which it receives and holds transaction data. Beginning on the date nine months after the registration date and continuing every day thereafter, the registered SDR would be required to publicly disseminate transaction reports in real time for those 50 SBS instruments, including with respect to block trades. The three-month period between the beginning of Phase 2 and the beginning of Phase 3 would allow the registered SDR a sufficient number of days to calculate and publish the block trade levels for those 50 SBS instruments. Also in Phase 2, the registered SDR would be required to begin disseminating any corrected reports required by proposed Rule 905 for those 50 SBS instruments. The Commission preliminarily believes, based on its experience implementing aspects of Regulation NMS, that the public dissemination of transaction reports for 50 SBS instruments is appropriate in Phase 2.

• *Phase 3,* 12 months after the registration date: *Wave 2* of public dissemination; the registered SDR must comply with proposed Rules 902 and 905 (with respect to dissemination of corrected transaction reports) for an additional 200 SBS instruments.

Twelve months after the registration date and six months after the effective reporting date, the registered SDR would be required, in consultation with the Commission's staff, to select an additional 200 SBS instruments for which to publicly disseminate transaction reports in real time, apply the block trade exception with respect to those 250 SBS instruments, and disseminate any corrected transaction reports required by proposed Rule 905 for those 250 SBS instruments. The Commission preliminarily believes, based on its experience implementing aspects of Regulation NMS, that the public dissemination of transaction reports for 250 SBS instruments is appropriate in Phase 3.

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[154] *See supra* Section IV.F (discussing reporting requirements for pre-enactment SBSs).

[155] 15 U.S.C. 78c–3(e)(1).

[156] *See* proposed Rule 900 (defining "registration date," with respect to a SDR, as the date on which the Commission registers the SDR, or, if the Commission registers the SDR before the effective date of proposed Regulation SBSR, the effective date of proposed Regulation SBSR; and "effective reporting date," with respect to a SDR, as the date six months after the registration date).

[157] *See supra* Section IV.F (discussing reporting requirements for transitional SBSs).

[158] Proposed Rule 906(c) would require each SBS dealer and major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any reporting obligations under proposed Regulation SBSR.

[159] Proposed Rule 905, among other things, would require a registered SDR to correct erroneous information with respect to SBSs.

[160] Proposed Rule 906(a) would require a registered SDR to notify participants at least once a day of SBSs for which the registered SDR lacks a participant ID, broker ID, desk ID, or trader ID. Proposed Rule 906(b) would require participants to provide to the registered SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR.

[161] As discussed in the SDR Registration Proposing Release, a data repository seeking to register with the Commission would have to provide the policies and procedures required by proposed Rule 907 as part of its application for registration. *See* SDR Registration Proposing Release, *supra* note 6.

• *Phase 4,* 18 months after the registration date: *Wave 3* of public dissemination; All SBSs reported to the registered SDR shall be subject to real-time public dissemination as specified in Rule 902.

Eighteen months after the registration date, proposed Regulation SBSR would become operative with respect to every SBS transaction reported to and held by the registered SDR. The Commission preliminarily believes, based on its experience implementing aspects of Regulation NMS, that requiring public dissemination of all SBSs reported to the registered SDR is appropriate in Phase 4.

B. Prohibition During Phase-In Period

Proposed Rule 911 is designed to prevent evasion of the post-trade transparency rules. The rule would provide that a reporting party shall not report a SBS to a registered SDR in a phase-in period described in proposed Rule 910 during which the registered SDR is not yet required to publicly disseminate transaction reports for that SBS instrument unless: (1) The SBS also is reported to a registered SDR that is disseminating transaction reports for that SBS instrument, consistent with proposed Rule 902; or (2) no other registered SDR is able to receive, hold, and publicly disseminate transaction reports regarding that SBS instrument.

The Commission is concerned that the development of new SDRs not be used to undermine the goal of post-trade transparency for SBSs. This could occur, for example, if a SDR were registered with the Commission, and—pursuant to proposed Rule 910—the SDR were in a phase-in period when it was not yet required to publicly disseminate transactions. Participants in an existing registered SDR could seek to report their SBSs to the second instead of the first registered SDR during the former's phase-in period, to avoid having their SBS transactions publicly disseminated in real time.

Under proposed Rule 911, counterparties would be permitted to report any SBS to the first registered SDR, even though the first registered SDR was in a phase-in period and not yet publicly disseminating transaction reports, because no other registered SDR could do so, either. However, if a later SDR registers and enters a phase-in period, participants would not be permitted to report SBSs exclusively to the subsequent registered SDR before it is required or able under proposed Rule 910 to disseminate transaction reports, if an earlier registered SDR could receive, hold, and publicly disseminate transaction reports for that SBS. Thus, a participant could report the SBS to both registered SDRs: To the newer one, to assist with operational testing; and to the operating one, to ensure that a trade report for that SBS was publicly disseminated in real time.

Request for Comment

The Commission requests comment on all aspects of the proposed rules relating to the proposed implementation of proposed Regulation SBSR, as provided in proposed Rules 910 and 911.

173. Are the proposed timeframes for reporting with respect to pre-enactment SBSs sufficiently clear?

174. Are the obligations applicable to registered SDRs, counterparties, and participants in each phase of the proposed phase-in schedule sufficiently clear? If not, what obligations are unclear? Please be specific in your response.

175. Do commenters generally agree with the proposed phase-in approach to implementation of the reporting timeframes contained in proposed Rule 910? Is the proposed phase-in schedule generally appropriate to allow reporting parties and registered SDRs sufficient time to implement the requirements of proposed Regulation SBSR? If not, why not? What period of time would be sufficient?

176. Do commenters believe that registered SDRs would be able to meet the requirements of proposed Phase 1? Why or why not? If three months after the SDR's registration date is not a sufficient amount of time to comply with proposed Rule 907, what amount of time would be sufficient? Do commenters believe that registered SDRs would need additional time to develop and implement certain policies and procedures that would be required under proposed Rule 907? If so, why, and which policies and procedures would require additional time to develop and implement?

177. Do commenters believe that registered SDRs, reporting parties, and participants would be able to satisfy their respective obligations under proposed Phase 2 within the proposed time frame? Why or why not? Would SBS counterparties and participants be able to comply, respectively, with proposed Rules 901 and 906(b) and (c) within the time frame specified in Phase 2? Why or why not? If not, what amount of time would be sufficient? Would counterparties or participants require additional time to comply with certain requirements in proposed Phase 2? If so, which requirement(s), and what additional amount of time would be necessary? Would counterparties and participants have adequate time to make any necessary systems changes to comply with the requirements in proposed Phase 2?

178. Would registered SDRs be able to correct erroneous information and notify counterparties of missing UICs within the time frame specified in Phase 2? Why or why not? If not, what amount of time would be adequate?

179. Do commenters believe that registered SDRs would be able to begin publicly disseminating SBS information, including corrected reports, and publicizing block trade levels, as would be required in proposed Phase 3? Why or why not? Would any specific requirement in proposed Phase 3 require additional time to implement? If so, which requirement(s), and what amount of time would be sufficient?

180. Do commenters believe that real-time public dissemination of SBS transaction reports should be required to commence for 50 SBS instruments nine months after the registration date? Should that period be longer or shorter? For example, should it be 12 months after the registration date? If so, why? Should the first wave of public dissemination be for more SBS instruments—perhaps 100? 200? Why or why not?

181. Do commenters generally agree with the proposed implementation schedule that would require public dissemination of SBSs in three Waves, as provided in proposed Phases 3, 4, and 5? Why or why not? If not, what approach would be more appropriate?

182. Should there be longer periods between Waves? If so, how long?

183. Is 50 SBSs an appropriate number of SBSs to include in proposed Phase 3? Why or why not? If not, what number would be appropriate?

184. Is it appropriate to require public dissemination of an additional 200 SBSs in proposed Phase 4? Why or why not?

185. What criteria should be used to choose the first 50 and second 200 SBSs be publically disseminated?

186. Do commenters believe that registered SDRs would be able to begin publicly disseminating all SBSs reported to the SDR 18 months after registration, as would be required under proposed Phase 5? Why or why not? If 18 months is not a sufficient amount of time, what amount of time would be sufficient?

187. Do commenters agree with the objective of proposed Rule 911? Why or why not?

188. Do commenters agree with the requirements of proposed Rule 911? Why or why not? Please be specific in your response. Do commenters believe that the Commission should take a

different approach to preventing potential evasions of the post-trade transparency rules? If so, what approach would be more appropriate? Please be specific in your response.

189. Under proposed Rule 910, the Commission would require a newly registered SDR to begin publicly disseminating trade reports for 50 SBS instruments beginning nine months after its registration date, and for an additional 200 SBS instruments beginning 12 months after its registration date. The registered SDR would be required at those times to calculate block trade thresholds in accordance with proposed Rule 907(b) and to disseminate reports of block trades in accordance with proposed Rule 902(b) with respect to those initial 50 and subsequent 200 instruments. Under proposed Rule 902(b), the registered SDR would be required to publicly disseminate a transaction report of the block trade with all transaction details other than notional size, and to disseminate the full trade report (including the notional size) at a later time. Should the Commission instead, during the phase-in period, provide for different approaches to publicly disseminating block trades in order to measure their associated cost to market participants? The Commission could require—at least for the phase-in period, but perhaps beyond—that different SBS instruments or transactions be subject to different block trade dissemination rules, to provide the Commission and market participants the opportunity to assess the relative costs and benefits of different approaches. For example, one group of SBS instruments or transactions could be subject to block trade dissemination mechanism described in proposed Rule 902(b). A second group could be subject to a regime where the full details of the transaction (including notional size) were disseminated, but with a one-hour delay, a third group could be subject to a regime where the full details were disseminated with a three-hour delay, and so on. Would commentators support or oppose such an approach? Why? Are there other approaches that should be considered in order to evaluate the impact of different post-trade transparency regimes for block trades on market quality? How long should each portion of the phase-in continue and what variation in the number and type of SBS instruments or transactions would be needed in each group to support a statistical analysis to distinguish between the potentially different effects on the markets resulting from distinct post-trade dissemination requirements?

XI. Section 31 Fees

Section 31(c) of the Exchange Act [162] provides that a national securities association must pay fees based on the "aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities * * * registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association." Pursuant to Section 761(a) of the Dodd-Frank Act,[163] SBSs are securities.[164] When proposed Regulation SBSR becomes effective, SBSs will be subject to prompt last-sale reporting pursuant to the rules of the Commission because they will be subject to real-time public dissemination. Therefore, a national securities association the members of which effect SBS sales other than on an exchange (including on a SB SEF) would be liable for Section 31 fees for any such sales.[165] A national securities association typically obtains funds to pay its Section 31 fees by imposing on its members an offsetting fee on covered sales, and would likely take the same approach with respect to SBSs.

Under the Exchange Act, brokers and dealers are required to join a national securities association.[166] The Dodd-Frank Act also provides for the registration of SBS dealers [167] and correspondingly amends the definition of "dealer" under the Exchange Act to exempt from the definition of dealer any person engaged in the business of buying and selling SBSs, other than SBSs with or for persons that are not eligible contract participants.[168] Under the new definition of "dealer," a SBS dealer that buys and sells SBSs—other than with or for persons that are not eligible contract participants—would not be required to register as a dealer under the Exchange Act and thus would not be required to join a national securities association.

Because the Dodd-Frank Act did not make corresponding changes for SBS brokers, a SBS broker would be considered a broker for purposes of the Exchange Act.[169] Thus, brokers that buy or sell SBSs, SBS dealers that buy and sell SBSs with or for persons that are not eligible contract participants, and SBS dealers that buy and sell securities other than SBSs would be required to join a national securities association. However, SBS dealers that buy and sell only securities that are SBSs would not be required to register as dealers under the Exchange Act and thus would not be required to join a national securities association.

The Commission is proposing to exempt SBSs from the calculation of Section 31 fees.[170] This exemption is designed to provide a more level playing field among SBS market participants. A national securities association would be able to collect funds to pay its Section 31 fees only from SBS market participants that are required to register with it. It would be unable to collect such member fees from SBS dealers that are not required to register with it. Thus, absent an exemption for all SBSs, the burden of indirectly paying the Section 31 fees would fall on some SBS market participants but not others.

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[162] 15 U.S.C. 78ee(c).

[163] 15 U.S.C. 78c(a).

[164] *See* 15 U.S.C. 78c(a)(10).

[165] National securities exchanges also would be liable for fees in connection with transactions in SBSs that they execute. *See* 15 U.S.C. 78ee(b).

[166] *See* 15 U.S.C. 78o(b)(8) ("It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or [sic] commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 78o–3 of this title or effects transactions in securities solely on a national securities exchange of which it is a member."). In addition, Rule 15b9–1(a) under the Exchange Act, 17 CFR 240.15b9–1(a), provides that any broker or dealer required by Section 15(b)(8) of the Exchange Act to become a member of a registered national securities association shall be exempt from such requirement if it (1) is a member of a national securities exchange, (2) carries no customer accounts, and (3) has annual gross income derived from purchases and sales of securities otherwise than on a national exchange of which it is a member in an amount no greater than $1,000. The gross income limitation does not apply to income derived from transactions (1) for the dealer's own account with or through another registered broker or dealer, or (2) through the Intermarket Trading System. *See* 17 CFR 240.15b9–1(b).

[167] *See* 15 U.S.C. 78o–8 ("The term 'dealer' means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise"); 15 U.S.C. 78c(71) (defining a security-based swap dealer "any person who—(i) holds themself out as a dealer in security-based swaps; (ii) makes a market in security-based swaps; (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps").

[168] *See* 15 U.S.C. 78c(a)(5).

[169] *See* 15 U.S.C. 78c(a)(4).

[170] 15 U.S.C. 78ee(f) ("The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.").

In addition, the Commission proposes to revise Rule 31(a)(10)(ii) under the Exchange Act[171] to conform the definition of "due date" in that rule to Section 31(e)(2) of the Exchange Act, as amended by Section 991 of the Dodd-Frank Act. This amendment provides that certain fees and assessments required under Section 31 will be required to be paid by September 25, rather than September 30.[172] The Commission proposes to make a corresponding amendment to the definition of "due date" in Rule 31(a)(10)(ii) under the Exchange Act by replacing the reference to "September 30" in that rule with a reference to "September 25."

Request for Comment

190. Do commenters agree with the proposal to exempt SBSs from Section 31 fees? Why or why not?

191. How much transaction volume in SBSs would the Commission be exempting from Section 31 fees on an annual basis?

192. If the Commission did not exempt SBSs from Section 31 fees, how would a national securities association obtain funds to pay the fees? Would the offsetting fees imposed on members of the national securities association be fairly distributed?

193. Do commenters agree that the proposed exemption would create a more level playing field among SBS market participants? Why or why not?

194. Absent the proposed exemption from Section 31 fees for SBSs, would there be difficulties in collecting Section 31 fees for mixed swaps (which are included with the definition of "security-based swap" and are thus securities)?

XII. General Request for Comment

Title VII of the Dodd-Frank Act requires the SEC to consult and coordinate to the extent possible with the CFTC for the purposes of assuring regulatory consistency and comparability, to the extent possible,[173] and states that in adopting rules, the CFTC and SEC shall treat functionally or economically similar products or entities in a similar manner.[174]

The CFTC is adopting rules related to the reporting of swaps and the public dissemination of swap transaction, pricing, and volume data, as required under Sections 723, 727, and 729 of the Dodd-Frank Act. Understanding that the Commission and the CFTC regulate different products and markets and, as such, appropriately may be proposing alternative regulatory requirements, the Commission requests comment on the impact of any differences between the Commission and CFTC approaches to the regulation of the reporting of swaps and SBSs and the public dissemination of swap and SBS transaction, pricing, and volume information.

In addition, legislatures and regulators in other jurisdictions are undertaking efforts to improve regulation in the market for OTC derivatives, including security-based swaps. The Commission requests comment generally on the impact of any differences between the Commission's proposed approach to the reporting and public dissemination of SBSs and that of any relevant foreign jurisdictions.

195. Would the regulatory approaches under the Commission's proposed rulemaking pursuant to Sections 763 and 766 of the Dodd-Frank Act and the CFTC's proposed rulemaking pursuant to Sections 723, 727, and 729 of the Dodd-Frank Act result in duplicative or inconsistent efforts on the part of market participants subject to both regulatory regimes or result in gaps between those regimes? If so, in what ways do commenters believe that such duplication, inconsistencies, or gaps should be minimized?

196. Do commenters believe the approaches proposed by the Commission and the CFTC to regulate the reporting of swaps and SBSs, and the public dissemination of swap and SBS transaction, volume, and pricing information, are comparable? If not, why not?

197. Do commenters believe there are approaches that would make the regulation of swap and SBS reporting and the public dissemination of swap and SBS transaction, volume, and pricing information more comparable? If so, what?

198. Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the CFTC that differs from our proposal? Is so, which one(s)? We request commenters to provide data, to the extent possible, supporting any such suggested approaches.

199. If registered SDRs would also be assuming real-time reporting obligations under the CEA, should the phase-in schedules for reporting obligations for swaps and SBSs be coordinated?

200. How will proposed Regulation SBSR interact with reporting and public dissemination regimes in other jurisdictions? Will there be significant differences? If so, would those differences result in regulatory arbitrage? If so, what steps, if any, should the Commission take to minimize opportunities for regulatory arbitrage?

XIII. Paperwork Reduction Act

Certain provisions of the proposed reporting rules proposed in this release contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[175] The Commission is therefore submitting relevant information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. Compliance with the collection of information requirements would be mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Specific collections of information are discussed further below.

A. Definitions—Rule 900

Proposed Rule 900 of Regulation SBSR contains only definitions of relevant terms and, thus, would not be a "collection of information" within the meaning of the PRA.

B. Reporting Obligations—Rule 901 of Regulation SBSR

Proposed Rule 901 of Regulation SBSR contains "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 901—Reporting Obligations."

1. Summary of Collection of Information

The Dodd-Frank Act amended the Exchange Act to require the reporting of SBS transactions. Accordingly, the Commission is proposing Rule 901 under the Exchange Act to implement this requirement. Proposed Rule 901 would specify who reports SBS transactions, where such transactions are to be reported, what information is to be reported, and in what format. Counterparties to a SBS would be responsible for reporting the SBS to a registered SDR, or, if there is no registered SDR that would accept the SBS, to the Commission. Proposed Rule 901 generally would divide the SBS information that must be reported into three categories: (1) Information that must be reported in real time pursuant

[171] 17 CFR 240.31(a)(10)(ii).

[172] Section 991 of the Dodd-Frank Act provides, in relevant part: "(1) AMENDMENTS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended * * * in subsection (e)(2), by striking 'September 30' and inserting 'September 25'."

[173] *See* Section 712(a)(2) of the Dodd-Frank Act.

[174] *See* Section 712(a)(7) of the Dodd-Frank Act.

[175] 44 U.S.C. 3501 *et seq.*

to proposed Rule 901(c);[176] (2) additional information that must be reported pursuant to proposed Rule 901(d) within specified timeframes;[177] and (3) life cycle events that must be reported pursuant to proposed Rule 901(e).[178]

Proposed Rule 901(i) would require the reporting of all of the information required by proposed Rules 901(c) and (d) for any pre-enactment SBSs or transitional SBSs, to the extent such information is available.

Proposed Rule 901 also would impose certain duties on a registered SDR that receives SBS transaction data. Proposed Rule 901(f) would require a registered SDR to time stamp, to the second, its receipt of any information submitted to it pursuant to proposed Rule 901(c), (d), or (e). Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS reported by a reporting party.

2. Proposed Use of Information

The SBS transaction information required to be reported pursuant to proposed Rule 901 would be used by registered SDRs, market participants, the Commission, and other regulators. The information reported by reporting parties pursuant to proposed Rule 901 would be used by registered SDRs to publicly disseminate real-time reports of SBS transactions, as well as to offer a resource for regulators to obtain detailed information about the SBS market. Market participants would use the public market data feed to assess the current market for SBSs and for valuation purposes. The Commission and other regulators would use information about SBS transactions reported to and held by registered SDRs for prudential oversight and to monitor potential systemic risks, as well as to examine for improper behavior and to take enforcement actions, as appropriate.

The transaction ID would be used on any subsequent transaction report or information submitted by a reporting party regarding that SBS (*e.g.,* on an error report to identify the original transaction to which the error report pertains).

3. Respondents

Proposed Rule 901 would apply to reporting parties.[179] The Commission preliminarily believes that up to 1,000 entities could be reporting parties under proposed Rule 901(a), and that it is reasonable to use the figure of 1,000 respondents for estimating collection of information burdens under the PRA. The Commission preliminarily believes, based on information currently available to it, that there are and would continue to be approximately 1,000 entities regularly engaged in the CDS marketplace, and that most of these entities are likely to regularly participate in other SBS markets.[180] Accordingly, the Commission preliminarily believes that an estimate of 1,000 respondents (*i.e.,* reporting parties) is appropriate.

Proposed Rule 901 also would impose certain duties on registered SDRs. Pursuant to Section 13(n) of the Exchange Act, an SDR must register with the Commission.[181] The Commission preliminarily believes that the number of SDRs seeking to register would not exceed ten. Accordingly, for purposes of estimating collection of information burdens under proposed Regulation SBSR, including proposed Rule 901, the Commission believes that it is reasonable to use ten as an estimate of the number of registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

a. For Reporting Parties

Pursuant to proposed Rule 901, all SBS transactions must be reported to a registered SDR or to the Commission. Together, sections (a), (b), (c), (d), (e) and (h) of proposed Rule 901 set forth the parameters that market participants must follow to report SBS transactions. Proposed Rule 901(i) addresses the reporting of pre-enactment SBSs. The proposed SBS reporting requirements would impose initial and ongoing burdens on reporting parties. The Commission preliminarily believes that these burdens would be a function of, among other things, the number of reportable SBS transactions and the data elements required to be reported for each SBS transaction.

Based on publicly available information and consultation with industry sources, the Commission preliminarily believes that even the most active participants in the SBS market do not enter into a large number of new SBSs on a daily basis. Rather, most regularly active SBS market

[176] Proposed Rule 901(c) would provide that, for each SBS for which it is the reporting party, the reporting party shall report the following information in real time: (1) The asset class of the SBS and, if the SBS is an equity derivative whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the SBS is based; (2) information that identifies the SBS instrument and the specific asset(s) or issuer of a security on which the SBS is based; (3) the notional amount(s), and the currenc(ies) in which the notional amount(s) is expressed; (4) the date and time, to the second, of execution, expressed using UTC; (5) the effective date; (6) the scheduled termination date; (7) the price; (8) the terms of any fixed or floating rate payments, and the frequency of any payments; (9) whether or not the SBS will be cleared by a clearing agency; (10) if both counterparties to a SBS are SBS dealers, an indication to that effect; (11) if applicable, an indication that the transaction does not accurately reflect the market; and (12) if the SBS is customized to the extent that the information provided in items (1) through (11) does not provide all of the material information necessary to identify such customized SBS or does not contain the data elements necessary to calculate the price, an indication to that effect. *See supra* Section III.B.

[177] Proposed Rule 901(d)(1) would provide that, in addition to the information required under proposed Rule 901(c), for each SBS for which it is the reporting party, the reporting party shall report: (1) The participant ID of each counterparty; (2) as applicable, the broker ID, desk ID, and trader ID of the reporting party; (3) the amount(s) and currenc(ies) of any up-front payment(s) and a description of the payment streams of each counterparty; (4) the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement; (5) the data elements necessary for a person to determine the market value of the transaction; (6) if the SBS will be cleared, the name of the clearing agency; (7) if the SBS is not cleared, whether the exception in Section 3C(g) of the Exchange Act was invoked; (8) if the SBS is not cleared, a description of the settlement terms, including whether the SBS is cash-settled or physically settled, and the method for determining the settlement value; and (9) the venue where the SBS was executed. Under proposed Rule 901(d)(2), any information required to be reported pursuant to paragraph (d)(1) must be reported promptly, but in no event later than: (1) 15 minutes after the time of execution for a SBS that is traded and confirmed electronically; (2) 30 minutes after the time of execution for a SBS that is confirmed electronically but not traded electronically; or (3) 24 hours after execution for a SBS that is not executed or confirmed electronically. *See supra* Sections IV.B. and C.

[178] Proposed Rule 901(e) would require that, for any life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to proposed Rule 901(c) or (d), the reporting party shall promptly provide updated information reflecting such change to the entity to which it reported the original transaction, using the transaction ID, subject to two enumerated exceptions. However, if a reporting party ceases to be a counterparty to a SBS due to an assignment or novation, the new counterparty shall be the reporting party following such assignment or novation, if the new counterparty is a U.S. person. If, following an assignment or novation, the new counterparty is not a U.S. person, the counterparty that is a U.S. person shall be the reporting party. *See supra* Section IV.D.

[179] *See* proposed Rule 900 (defining "reporting party" as the counterparty to an SBS with the duty to report information in accordance with proposed Regulation SBSR to a registered SDR, or if there is no registered SDR that would receive the information, to the Commission).

[180] The Commission includes in its estimate of reporting parties clearing agencies, which under proposed Rule 901(e)(i) could become the reporting parties for SBS transactions where the original reporting party ceases to be a counterparty to the SBS following a novation of the transaction. *See supra* Section IV.D.

[181] *See* 15 U.S.C. 78m(n). The Commission today is separately proposing several rules to implement this requirement. *See* SDR Registration Proposing Release, *supra* note 6.

participants enter into only a small number of new SBSs during any given time period, while a few larger dealers participate in the majority of SBS transactions. The Commission has sought available information in an effort to quantify the number of aggregate SBS transactions on an annual basis. According to publicly available data from DTCC, recently, there have been an average of approximately 36,000 CDS transactions per day,[182] corresponding to a total number of CDS transactions of approximately 13,140,000 per year. The Commission preliminarily believes that CDSs represent 85% of all SBS transactions.[183] Accordingly, and to the extent that historical market activity is a reasonable predictor of future activity,[184] the Commission preliminarily estimates that the total number of SBS transactions that would be subject to proposed Rule 901 on an annual basis would be approximately 15,460,000, which is an average of approximately 42 per reporting party per day.[185]

The Commission believes that reporting parties would face three categories of burdens to comply with proposed Rule 901 of Regulation SBSR. First, each reporting party would likely need to develop an internal order and trade management system ("OMS") capable of capturing relevant SBS transaction information. The OMS would have to include or be connected to a system designed to store SBS transaction information. The Commission understands that it is current industry practice, in many cases, to add SBS transaction details to the transaction record post-execution in a process known as "enrichment." Accordingly, the OMS would likely need to link both to the trade desk—to permit real-time transaction reporting under proposed Rule 901(c)—and to the back office—to facilitate reporting of complete transactions as required under proposed Rule 901(d).

Second, each reporting party would have to implement a reporting mechanism. This would include a system that "packages" SBS transaction information from the reporting party's OMS, sends such information, and tracks it. The reporting mechanism would also include necessary data transmission lines to the appropriate registered SDR.

Third, each reporting party would have to establish an appropriate compliance program and support for the operation of the OMS and reporting mechanism. Relevant elements of the compliance program would include transaction verification and validation protocols; the ability to identify and correct erroneous transaction reports; and necessary technical, administrative, and legal support. Additional operational support would include new product development, systems upgrades, and ongoing maintenance.

Internal Order Management. To comply with their reporting obligations, reporting parties would likely need to develop and maintain an internal OMS that can capture relevant SBS data. The Commission preliminarily estimates that capturing SBS data in a manner sufficient to comply with proposed Rule 901 would impose an initial one-time aggregate burden of approximately 355,000 burden hours, which corresponds to a burden of 355 hours for each reporting party.[186] This estimate includes an estimate of the number of potential burden hours required to amend internal procedures, design or reprogram systems, and implement processes to ensure that SBS transaction data are captured and preserved. The Commission further preliminarily estimates that capturing SBS data in a manner sufficient to comply with proposed Rule 901 would impose an annual aggregate burden of approximately 436,000 burden hours, 436 burden hours for each reporting party.[187] This figure would include day-to-day support of the OMS, as well as an estimate of the amortized annual burden associated with system upgrades and periodic "re-platforming" (*i.e.,* implementing significant updates based on new technology). The Commission preliminarily estimates that, to capture and maintain relevant information and documents, reporting parties could incur aggregate annual dollar cost burden (first-year and ongoing) of $1,000,000, which corresponds to $1,000 for each participant.[188] The figure is an estimate of the hardware and associated maintenance costs for sufficient memory to capture and store SBS transactions, including redundant back-up systems.

Summing these burdens, the Commission preliminarily estimates that the initial (*i.e.,* first-year) aggregate annualized burden on reporting parties for internal order management under proposed Rule 901 would be 791,000 burden hours, which corresponds to 791 burden hours for each reporting party.[189] The Commission preliminarily estimates that the initial aggregate annualized dollar cost burden would be $1,000,000, which would correspond to $1,000 for each reporting party.[190] The Commission further preliminarily estimates that the ongoing aggregate annualized burden on reporting parties for internal order management under proposed Rule 901 would be 436,000 burden hours, which corresponds to 436 burden hours for each reporting party.[191] The Commission preliminarily estimates that the ongoing aggregate annualized dollar cost burden would be $1,000,000, which corresponds to $1,000 for each reporting party.[192]

SBS Reporting Mechanism. Reporting parties would be required to incur

[182] *See, e.g., http://www.dtcc.com/products/derivserv/data_table_iii.php* (weekly data as updated by DTCC).

[183] The Commission's estimate is based on internal analysis of available SBS market data. The Commission is seeking comment about the overall size of the SBS market.

[184] The Commission notes that regulation of the SBS markets, including by means of proposed Regulation SBSR, could impact market participant behavior.

[185] These figures are based on the following: [13,140,000/0.85] = 15,458,824. [((15,458,824 estimated SBS transactions)/(1,000 estimated reporting parties))/(365 days/year)] = 42.35, or approximately 42 transactions per day. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[186] This figure is based on discussions of Commission staff with various market participants and is calculated as follows: [((Sr. Programmer at 160 hours) + (Sr. Systems Analyst at 160 hours) + (Compliance Manager at 10 hours) + (Director of Compliance at 5 hours) + (Compliance Attorney at 20 hours)) × (1,000 reporting parties)] = 355,000 burden hours, which is 355 hours per reporting party (assuming 1,000 reporting parties). The Commission preliminarily believes that information on SBS transactions is currently being retained by many market participants in the ordinary course of business. This may result in lesser burdens for those parties.

[187] This figure is based on discussions of Commission staff with various market participants and is calculated as follows: [((Sr. Programmer at 32 hours) + (Sr. Systems Analyst at 32 hours) + (Compliance Manager at 60 hours) + (Compliance Clerk at 240 hours) + (Director of Compliance at 24 hours) + (Compliance Attorney at 48 hours)) × (1,000 reporting parties)] = 436,000 burden hours, which is 436 hours per reporting party.

[188] This estimate is based on discussions of Commission staff with various market participants and is calculated as follows: [($250/gigabyte of storage capacity) × (4 gigabytes of storage) × (1,000 reporting parties)] = $1,000,000. The Commission preliminarily believes that storage costs associated with saving relevant SBS information and documents would not vary significantly between the first year and subsequent years. Accordingly, the Commission has preliminarily estimated the initial and ongoing storage costs to be the same. Moreover, the per-entity annual data storage figure of $1,000 is an average. Some parties may face higher costs, while others would simply use existing storage resources.

[189] This estimate is based on the following: [((355 one-time burden hours for systems development) + (436 burden hours for annual costs)) × (1,000 reporting parties)] = 791,000 burden hours, which corresponds to 791 burden hours per reporting party.

[190] *See supra* note 188.

[191] *See supra* note 187.

[192] *See supra* note 188.

initial one-time costs to establish connectivity to a registered SDR to report SBS transactions. Depending on the number of SBS asset classes that a reporting party transacts in, and which registered SDRs accept the resulting SBS transaction reports, multiple connections to different registered SDRs could be necessary. For purposes of estimating relevant burdens, the Commission preliminarily estimates that, on average, each reporting party would require connections to two registered SDRs. The Commission bases this estimate on discussions with market participants. We recognize that, in light of the developing SBS market and regulatory structure, the actual average number of SDR connections maintained by each reporting party may be different.

This estimate is based on the following factors. First, based on discussions with SBS market participants, the Commission understands that the majority of SBSs are comprised of CDS and equity-based swaps. Accordingly, the Commission preliminarily believes that transactions in these two asset classes would predominate. Moreover, the Commission preliminarily believes that SBS market participants may not all transact in each asset class. Thus, even if each registered SDR accepted transaction reports only for a single SBS asset class, the total number of connections needed by many reporting parties would likely be limited. Next, the Commission also preliminarily believes that, for operational efficiency, a reporting party would seek to use only one registered SDR per asset class for repository services. Accordingly, to the extent that a single registered SDR accepted SBSs in multiple asset classes, a reporting party would need fewer connections. Finally, a reporting party that required a significant number of connections to registered SDRs could engage a third party—for example, a dealer or connectivity services provider—instead of independently establishing its own connections. Accordingly, the Commission preliminarily believes that one connection may suffice for many reporting parties.

On this basis, the Commission preliminarily estimates that the cost to establish and maintain connectivity to a registered SDR to facilitate the reporting required by proposed Rule 901 would impose an annual dollar cost burden of approximately $200,000,000, which corresponds to a dollar cost burden of $200,000 for each reporting party.[193]

Moreover, the Commission believes that establishing a reporting mechanism for SBS transactions would impose internal burdens on each reporting party, including the development of systems necessary to capture and send information from the entity's OMS to the relevant registered SDR, as well as corresponding testing and support. The Commission preliminarily estimates an initial one-time aggregate burden of 172,000 burden hours, which corresponds to a burden of 172 burden hours for each reporting party.[194] In addition, the Commission preliminarily estimates that reporting specific SBS transactions to a registered SDR as required by proposed Rule 901 would impose an ongoing aggregate burden of 77,300 burden hours, which corresponds to a burden of approximately 80 burden hours for each reporting party.[195]

Thus, the Commission preliminarily estimates that the initial (first-year) aggregate annualized burden on reporting parties for reporting under proposed Rule 901 would be 249,300 burden hours, which corresponds to approximately 250 burden hours for each reporting party.[196] The Commission preliminarily estimates that the initial aggregate annualized dollar cost burden would be $200,000,000, which corresponds to $200,000 for each reporting party.[197] In addition, the Commission preliminarily estimates that the ongoing aggregate annualized burden on reporting parties under proposed Rule 901 would be 77,300 burden hours, which corresponds to approximately 80 burden hours for each reporting party.[198] The Commission preliminarily estimates that the ongoing aggregate annualized dollar cost burden would be $200,000,000, which corresponds to $200,000 for each reporting party.[199]

Compliance and Ongoing Support. As stated above, in complying with proposed Rule 901, each reporting party also would need to establish and maintain an appropriate compliance program and support for the operation of the OMS and reporting mechanism, which would include transaction verification and validation protocols, and necessary technical, administrative, and legal support. Additional operational support would include new product development, systems upgrades, and ongoing maintenance. The Commission preliminarily believes that initial burdens associated with this aspect of proposed Rule 901—*i.e.,* the establishment of relevant compliance capability—would in significant part involve the development of appropriate policies and procedures, which, for those participants who are SBS dealers or major SBS participants, is addressed in connection with proposed Rule 906(c).[200] A reporting party also would need to design its OMS to include tools to ensure accurate, complete reporting. On an ongoing basis, a reporting party would need to employ appropriate technical and compliance staff to maintain and support the operation of its order management and reporting systems over time.

The Commission preliminarily estimates that designing and implementing an appropriate compliance and support program would impose an initial, one-time aggregate burden of approximately 180,000 burden hours, which corresponds to a

[193] This estimate is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants for data reporting purposes. The Commission derived the total estimated expense from the following: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) × (2 SDR connections per reporting party) × (1,000 reporting parties)] = $200,000,000. The Commission understands that many reporting parties already have established linkages to entities that may register as SDRs, which could significantly reduce the out-of-pocket costs associated with this establishing the reporting function contemplated by proposed Rule 901.

[194] This figure is based on discussions with various market participants as follows: [((Sr. Programmer at 80 hours) + (Sr. Systems Analyst at 80 hours) + (Compliance Manager at 5 hours) + (Director of Compliance at 2 hours) + (Compliance Attorney at 5 hours)) × (1,000 reporting parties)] = 172,000 burden hours, which is 172 hours per reporting party. The Commission preliminarily believes that many dealers and major market participants already are reporting SBS data to some extent in the ordinary course of business. Thus, as a practical matter, these parties may face substantially lower burdens.

[195] This figure is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants, including alternative trading systems and self-regulatory organizations for data reporting purposes. The Commission derived the total estimated initial burden from the following: [(15,460,000 estimated total annual SBS transactions) × (0.005 hours/transaction)] = 77,300 burden hours, which is 77.3 burden hours per reporting party.

[196] This estimate is based on the following: [((172 one-time burden hours) + (77.3 burden hours for ongoing costs)) × (1,000 reporting parties)] = 249,300 burden hours, which corresponds to 249.3 burden hours per reporting party.

[197] *See supra* note 193.

[198] *See supra* note 195.

[199] *See supra* note 193.

[200] *See infra* Section XIII.G.

burden of 180 burden hours for each reporting party.[201]

The Commission further preliminarily estimates that maintaining a reporting party's compliance and support program would impose an ongoing aggregate burden of approximately 218,000 burden hours, which corresponds to a burden of 218 burden hours for each reporting party.[202] This figure includes day-to-day support of the OMS, as well as an estimate of the amortized annual burden associated with system upgrades and periodic re-platforming (*i.e.,* implementing significant updates based on new technology).

Therefore, the Commission preliminarily estimates the initial aggregate annualized burden on reporting parties for compliance and ongoing support under proposed Rule 901 would be 398,000 burden hours, which corresponds to 398 burden hours for each reporting party.[203] The Commission further preliminarily estimates that the ongoing aggregate annualized burden on reporting parties for compliance and ongoing support under proposed Rule 901 would be 218,000 burden hours, which corresponds to 218 burden hours for each reporting party.[204]

Aggregate Burdens. Thus, the Commission estimates that the total first-year burden—the initial aggregate annualized burden—on reporting parties associated with proposed Rule 901 would be 1,438,300 burden hours, which corresponds to approximately 1,438 burden hours per reporting party.[205] In addition, the Commission preliminarily estimates that the initial aggregate annualized dollar cost burden on reporting parties associated with proposed Rule 901 would be $301,000,000, which corresponds to a dollar cost burden of $301,000 per reporting party.[206]

Likewise, the Commission estimates that the ongoing aggregate annual burdens on reporting parties associated with proposed Rule 901 would be 731,300 burden hours, which corresponds to 731 burden hours per reporting party.[207] In addition, the Commission preliminarily estimates that the ongoing, aggregate annualized dollar cost burden on reporting parties associated with proposed Rule 901 would be $301,000,000, which corresponds to a dollar cost burden of $301,000 per reporting party.[208]

b. For Registered SDRs

Proposed Rule 901(f) would require a registered SDR to time-stamp information that it receives. Proposed Rule 901(g) would require a registered SDR to assign a unique transaction ID to each SBS it receives. The Commission preliminarily believes that a registered SDR would need to design its systems to include these capabilities, but that such design elements would not pose additional significant burdens to incorporate in the context of designing and building the technological framework that would be required of a SDR to become registered.[209] Therefore, the Commission preliminarily estimates that proposed Rules 901(f) and (g) would impose an initial one-time aggregate burden of 1,200 burden hours, which corresponds to 120 burden hours per registered SDR.[210] This figure is based on an estimate of ten registered SDRs. Once operational, these elements of each registered SDR's system would have to be supported and maintained. Accordingly, the Commission estimates that proposed Rule 901(f) and (g) would impose an annual aggregate burden of 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[211] This figure represents an estimate of the burden for a registered SDR for support and maintenance costs for the registered SDR's systems to time stamp incoming submissions and assign transaction IDs.

Thus, the Commission preliminarily estimates that the first-year aggregate annualized burden associated with proposed Rules 901(f) and (g) would be 2,820 burden hours, which corresponds to 282 burden hours per registered SDR.[212] Correspondingly, the Commission preliminarily estimates that the ongoing aggregate annualized burden associated with proposed Rules 901(f) and (g) would be 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[213]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is issuing the SDR Registration Proposing Release, which includes recordkeeping requirements for SBS transaction data received by a registered SDR pursuant to proposed Regulation SBSR. Specifically, proposed Rule 13n–5(b)(4) would require a registered SDR to maintain the transaction data that it collects for not less than five years after the applicable SBS expires, and historical positions and historical market values for not less than five years.[214] Accordingly, SBS transaction reports received by a registered SDR pursuant to proposed Rule 901 would be required to be retained by the SDR for not less than five years.

6. Collection of Information is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

Information collected pursuant to proposed Rule 901(c) would be widely available to the public to the extent it is incorporated into SBS transaction reports that are publicly disseminated by a registered SDR pursuant to

[201] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer at 100 hours) + (Sr. Systems Analyst at 40 hours) + (Compliance Manager at 20 hours) + (Director of Compliance at 10 hours) + (Compliance Attorney at 10 hours)) × (1,000 reporting parties)] = 180,000 burden hours, which corresponds to 180 hours per reporting party.

[202] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer at 16 hours) + (Sr. Systems Analyst at 16 hours) + (Compliance Manager at 30 hours) + (Compliance Clerk at 120 hours) + (Director of Compliance at 12 hours) + (Compliance Attorney at 24 hours)) × (1,000 reporting parties)] = 218,000 burden hours, which is 218 hours per reporting party.

[203] This estimate is based on the following: [((180 one-time burden hours) + (218 annual burden hours)) × (1,000 reporting parties)] = 398,000 burden hours, which corresponds to 398 burden hours per reporting party.

[204] *See supra* note 202.

[205] This figure is based on summing the initial aggregate annualized burdens for reporting parties under proposed Rule 901: [(791,000) + (249,300) + (398,000)] = 1,438,300 burden hours.

[206] This figure is based on summing the estimated first-year aggregate annualized dollar cost burdens as follows: [($300,000,000) + ($1,000,000)] = $301,000,000.

[207] This figure is based on summing estimated ongoing annual aggregate burdens as follows: [(436,000) + (77,300) + (218,000)] = 731,300 burden hours.

[208] This figure is based on summing the estimated first-year aggregate annualized dollar cost burdens as follows: [($300,000,000) + ($1,000,000)] = $301,000,000.

[209] The Commission is proposing Rules 13n–4(b), 13n–5, and 13n–6 under the Exchange Act, which would relate to the duties, data collection and maintenance, and automated systems requirements for SDRs. *See* SDR Registration Proposing Release, *supra* note 6.

[210] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer at 80 hours) + (Sr. Systems Analyst at 20 hours) + (Compliance Manager at 8 hours) + (Director of Compliance at 4 hours) + (Compliance Attorney at 8 hours)) × (10 registered SDRs)] = 1,200 burden hours, which is 120 hours per registered SDR.

[211] This figure is based on discussions with various market participants as follows: [((Sr. Programmer at 60 hours) + (Sr. Systems Analyst at 48 hours) + (Compliance Manager at 24 hours) + (Director of Compliance at 12 hours) + (Compliance Attorney at 8 hours)) x (10 SDRs)] = 1,520 burden hours, which is 152 hours per registered SDR.

[212] This figure is based on the following: [(1,200) + (1,520)] = 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.

[213] *See supra* note 211.

[214] *See* SDR Registration Proposing Release, *supra* note 6.

proposed Rule 902. A registered SDR would be under an obligation to maintain the confidentiality of any information collected pursuant to proposed Rule 901(d), pursuant to Sections 13(n)(5) of the Exchange Act and proposed Rule 13n–9 thereunder.[215] To the extent that the Commission receives confidential information pursuant this collection of information, such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

201. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

202. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 901? In particular, how many entities would incur collection of information burdens pursuant to proposed Rule 901?

203. Would covered entities incur any initial burdens associated with systems design, programming, expanding systems capacity, and establishing compliance programs pursuant to proposed Rule 901?

204. Would there be different or additional burdens associated with the collection of information under proposed Rule 901 that a covered entity would not undertake in the ordinary course of business?

205. Are there additional burdens that the Commission has not addressed in its preliminary burden estimates?

206. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

207. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

208. What entities may be subject to proposed Rule 901, whether specific classes of entities may be impacted, how many entities may be impacted, and will any such entity or class of entities be impacted differently than others? In addition, the Commission seeks comment on the accuracy of its estimates as to the number of participants in the SBS market that would be required to report information pursuant to proposed Rule 901.

C. Public Dissemination of Transaction Reports—Rule 902 of Regulation SBSR

Certain provisions of proposed Rule 902 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 902—Public Dissemination of Transaction Reports."

1. Summary of Collection of Information

Proposed Rule 902(a) generally would require that a registered SDR publicly disseminate a transaction report for each SBS transaction immediately upon receipt of information about the SBS submitted by a reporting party pursuant to proposed Rule 901(c), along with any indicator(s) contemplated by the registered SDR's policies and procedures.[216] If its systems are unavailable for publicly disseminating transaction data immediately upon receipt, the registered SDR would be required to disseminate the transaction data immediately upon re-opening.

Pursuant to Rule 902(b), a registered SDR would be required to publicly disseminate a transaction report of a SBS that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report would consist of all the information reported by the reporting party pursuant to proposed Rule 901(c), except for the notional size, plus the transaction ID and an indicator that the report represents a block trade. The registered SDR would be required to publicly disseminate a complete transaction report for such block trade (including the transaction ID and the full notional size) at a later time.

Proposed Rule 902(c) would prohibit a registered SDR from disseminating: (1) the identity of either counterparty to a SBS; (2) with respect to a SBS that is not cleared at a registered clearing agency and that is reported to a registered SDR, any information disclosing the business transactions and market positions of any person; (3) any information regarding a SBS reported pursuant to proposed Rule 901(i).

2. Proposed Use of Information

The real-time public dissemination requirement contained in proposed Rule 902 would provide post-trade transparency for SBS transactions, as required by the Dodd-Frank Act. Publicly disseminated reports of SBS transactions that are not block trades would include the full notional size. Publicly disseminated reports of SBS transactions that are block trades would occur pursuant to a two-step process. First, a real-time report would be disseminated without the notional size, but with an indication that the trade is a block trade as well as a transaction ID. At a later time, a follow-on report would be disseminated, including the notional size, with the transaction ID used to connect the second report to the first report.

3. Respondents

The collection of information associated with the proposed Rule 902 would apply to registered SDRs. As noted above, the Commission preliminarily believes that an estimate of ten registered SDRs is reasonable for purposes of its analysis of potential burdens under the PRA.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Although proposed Rule 902 would not prescribe a manner of public dissemination, the Commission anticipates that a registered SDR would establish a mechanism functionally similar to one established by TRACE, which is a system operated by FINRA for collecting and disseminating to the public reports of trades in corporate and agency debt securities.

Simultaneously with this proposal, the Commission is proposing new Rules 13n–1 through 13n–11 under the Exchange Act relating to the SDR registration process, the duties of SDRs, and their core principles.[217] The SDR Registration Proposing Release covers anticipated collections of information with respect to various aspects of establishing and operating an SDR, including its start-up and ongoing operations. Proposed Rule 13n–5(b)(1) would set forth parameters each registered SDR would be required to follow with regard to collecting and maintaining transaction data. Every SDR would be required to (i) establish, maintain, and enforce written policies and procedures for the reporting of transaction data to the SDR and shall accept all transaction data that is reported in accordance with such policies and procedures; (ii) accept all SBSs in any asset class that are reported to it in accordance with its policies and procedures to the extent that it accepts any SBS in a particular asset class; (iii) establish, maintain, and enforce written policies and procedures to verify the accuracy of the transaction data that has been submitted to the SDR, including

[215] *See id.*

[216] *See* proposed Rule 907(a)(4).

[217] *See* SDR Registration Proposing Release, *supra* note 6.

clearly identifying the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of the transaction data; and (iv) promptly record the transaction data it receives. The SDR Registration Proposing Release describes the relevant burdens and costs that complying with proposed Rule 13n–5(b)(1) would entail.

The Commission preliminarily believes that a registered SDR would be able to integrate the capability to publicly disseminate real-time SBS transaction reports required under proposed Rule 902 as part of its overall system development for transaction data. Accordingly, the Commission believes that the burdens associated with enabling and maintaining compliance with proposed Rule 902 would, as a practical matter, represent a portion of a registered SDR's overall systems development budget and process. Based on discussions with industry participants, the Commission preliminarily estimates that to implement and comply with the real-time public dissemination requirement of proposed Rule 902, each registered SDR would incur a burden equal to an additional 20% of the first-year and ongoing burdens discussed in the SDR Registration Proposing Release.[218]

On this basis, the Commission preliminarily estimates that the initial one-time aggregate burden imposed by the proposed Rule 902 for development and implementation of the systems needed to disseminate the required transaction information, including the necessary software and hardware, would be approximately 84,000 hours and a dollar cost of $20 million, which would correspond to a burden of 8,400 hours and a dollar cost of $2 million for each registered SDR.[219] In addition, the Commission preliminarily estimates that annual aggregate burden (initial and ongoing) imposed by the proposed Rule 902 would constitute approximately 50,400 hours and a dollar cost of $12 million, which would correspond to a burden of 5,040 hours and a dollar cost of $1.2 million for each registered SDR.[220] Thus, the Commission preliminarily estimates that the total first-year (initial) aggregate annualized burden on registered SDRs associated with real-time public dissemination requirement under proposed Rule 902 would be approximately 134,400 hours and a dollar cost of $32 million, which would correspond to a burden of 13,440 hours and a dollar cost of $3.2 million for each registered SDR.[221]

5. Recordkeeping Requirements

Pursuant to proposed Rule 13n–7(b) under the Exchange Act,[222] a registered SDR would be required to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination. This requirement would encompass real-time SBS transaction reports disseminated by the registered SDR. Accordingly, SBS transaction reports disseminated by a registered SDR pursuant to proposed Rule 902 would be required to be retained for not less than five years.

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

Information collected pursuant to proposed Rule 902 would be widely available to the extent that it is incorporated into SBS transaction reports that are publicly disseminated by a registered SDR pursuant to proposed Rules 902(a) and (b). However, a registered SDR would be under an obligation to maintain the confidentiality of any information that is not subject to public dissemination. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

209. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

210. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 902? In particular, how many entities would incur collection of information burdens pursuant to proposed Rule 902?

211. Would registered SDRs incur any initial burdens associated with systems design, programming, expanding systems capacity, and establishing compliance programs pursuant to proposed Rule 902?

212. Would there be different or additional burdens associated with the collection of information under proposed Rule 902 that a registered SDR would not undertake in the ordinary course of business?

213. Are there additional burdens that the Commission has not addressed in its preliminary burden estimates?

214. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

215. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

D. Coded Information—Rule 903 of Regulation SBSR

The Commission does not believe that proposed Rule 903 would be a "collection of information" within the meaning of the PRA because the rule would merely permit reporting parties and registered SDRs to use codes in place of certain data elements, subject to

[218] *See* Section IV.D.2 (SDR Duties, Data Collection and Maintenance, Automated Systems, and Direct Electronic Access) of the SDR Registration Proposing Release. This estimate is based on discussions with industry members and market participants, including potential SDRs who would be required to register as SDRs under the Dodd-Frank Act, and includes time necessary to design and program a registered SDR's system to calculate and disseminate initial and subsequent trade reports as well as annual costs associated with systems testing and maintenance necessary for the special handling of block trades. These figures do not include the development of policies and procedures necessary to calculate block trade levels pursuant to proposed Rule 907(b).

[219] *See* SDR Registration Proposing Release, *supra* note 6 for the total burden associated with establishing SDR technology systems. The Commission derived this estimated burden from the following: [((Attorney at 1,400 hours) + (Compliance Manager at 1,600 hours) + (Programmer Analyst at 4,000 hours) + (Senior Business Analyst at 1,400 hours)) × (10 registered SDRs)] = 84,000 burden hours, which corresponds to 8,400 hours per registered SDR.

[220] *See* SDR Registration Proposing Release, *supra* note 6 for the total ongoing annual burdens associated with operating and maintaining SDR technology systems. The Commission derived this estimated burden from the following: [((Attorney at 840 hours) + (Compliance Manager at 960 hours) + (Programmer Analyst at 2,400 hours) + (Senior Business Analyst at 840 hours)) × (10 registered SDRs)] = 50,400 burden hours, which corresponds to 5,040 hours per registered SDR.

[221] These estimates are based on the following: [(84,000 one-time burden hours) + (50,400 annual burden hours)] = 134,400 burden hours, which corresponds to 13,440 hours per registered SDR; [($20 million one-time dollar cost burden) + ([$12] million annual dollar cost burden) = $32 million cost burden, which corresponds to $3.2 million per registered SDR.

[222] *See* SDR Registration Proposing Release, *supra* note 6.

certain conditions. The rule would offer subject entities greater flexibility in meeting the obligations specified elsewhere in proposed Regulation SBSR related to the reporting of SBS transactions.

E. Operating Hours of Registered Security-Based Swap Data Repositories—Rule 904 of Regulation SBSR

Certain provisions of proposed Rule 904 contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 904—Operating Hours of Registered Security-Based Swap Data Repositories."

1. Summary of Collection of Information

Proposed Rule 904 would require a registered SDR to operate continuously, subject to two exceptions. First, a registered SDR could establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered SDR would be required to provide reasonable advance notice to participants and to the public of its normal closing hours. Second, a registered SDR could declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered SDR would, to the extent reasonably possible under the circumstances, be required to avoid scheduling special closing hours during when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

Paragraphs (c) and (e) of proposed Rule 904 would specify requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. First, during normal closing hours and, to the extent reasonably practicable, during special closing hours, a registered SDR would be required to have the capability to receive and hold in queue transaction data it receives.[223] Second, if a registered SDR could not hold in queue transaction data to be reported, it would be required, immediately upon resuming normal operations, to send a notice to all participants that it has resumed normal operations and to immediately disseminate the transaction data required to be reported under proposed Rule 901(c) and received from the participants following the notice.[224]

Two of the requirements contained in Rule 904 constitute requirements already contained in other proposed rules. First, the requirement in Rule 904(d) that, immediately upon system re-opening, a registered SDR would be required to publicly disseminate any transaction data required to be reported under proposed Rule 901(c) and held in queue, is also contained in the proposed Rule 902(a). Second, the requirement in proposed Rule 904(e) that, if a reporting party that has an obligation to report transaction data could not to do so because a registered SDR's system was unavailable, it would be required to submit that information immediately after it receives a notice that it is possible to do so, is already implicitly contained in proposed Rule 901.

2. Proposed Use of Information

The information that would be provided pursuant to proposed Rule 904 is necessary to allow participants and the public to know the normal and special closing hours of the registered SDR, and to allow participants to take appropriate action in the event that the registered SDR cannot accept SBS transaction reports from participants.

3. Respondents

Proposed Rule 904 would apply to all registered SDRs. As noted above, the Commission preliminarily estimates that there would be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission preliminarily estimates that that the one-time, initial burden, as well as ongoing annualized burden for each registered SDR associated with proposed Rule 904 would be minimal, because registered SDRs would already have undertaken necessary steps in compliance with other proposed rules. First, simultaneously with this proposal, the Commission is proposing the SDR Registration Proposed Rules, including proposed Rules 13n–1 through 240–13n–11.[225] The SDR Registration Proposed Rules cover collections of information with respect to various aspects of establishing and operating a registered SDR, including, implicitly, its hours of operation.[226]

The Commission preliminarily believes that the requirements for a registered SDR to provide reasonable advance notice to participants and to the public of its normal and special closing hours, as well as to provide a notice to participants that it is possible to report transaction data to a registered SDR after its system was unavailable, would entail a minor burden. On this basis, the Commission preliminarily estimates that the annual aggregate burden (first-year and ongoing) imposed by proposed Rule 904 would be 360 hours, which corresponds to 36 hours per registered SDR.[227]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is proposing the SDR Registration Proposed Rules.[228] Proposed Rule 13n–7(b) would require a registered SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination.[229] This requirement would encompass notices issued by a registered SDR to participants under proposed Rule 904.

6. Collection of Information is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

The Commission anticipates that any notices issued by a registered SDR to its participants would be publicly available.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

216. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

217. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 904? In particular, how many

[223] *See* proposed Rule 904(c).

[224] *See* proposed Rule 904(e).

[225] *See* SDR Registration Proposing Release, *supra* note 6.

[226] The requirement in proposed Rule 904(e) for the participants to report information to the registered SDR upon receiving a notice that the registered SDR resumed its normal operations is already part of the participant's reporting obligations under proposed Rule 901 and is already contained in the burden estimate for the proposed Rule 901.

[227] This figure is based on the Commission's experience as follows: [(Operations Specialist at 3 hours/month) × (12 months/year) × (10 registered SDRs)] = 360 burden hours.

[228] *See* SDR Registration Proposing Release, *supra* note 6.

[229] *See id.,* proposed Rule 13n–7(b) under the Exchange Act.

entities would incur collection of information burdens pursuant to proposed Rule 904?

218. Would the burdens imposed under proposed Rule 904 be different or additional to those that a registered SDR would undertake in the ordinary course of business?

219. Are there additional burdens that the Commission has not addressed in its preliminary burden estimates?

220. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

221. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

F. Correction of Errors in Security-Based Swap Information—Rule 905 of Regulation SBSR

Certain provisions of proposed Rule 905 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 905—Correction of Errors in Security-Based Swap Information."

1. Summary of Collection of Information

Proposed Rule 905 would establish duties for SBS counterparties and registered SDRs to correct errors in information that previously has been reported.

Counterparty Reporting Error. Under proposed Rule 905(a)(1), where a counterparty that was not the reporting party for a SBS discovers an error in the information reported with respect to such SBS, the counterparty shall promptly notify the reporting party of the error. Under proposed Rule 905(a)(2), where a reporting party for a SBS transaction discovers an error in the information reported with respect to a SBS, or receives notification from its counterparty of an error, the reporting party shall promptly submit to the entity to which the SBS was originally reported an amended report pertaining to the original transaction report. The reporting party would submit an amended report to the registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to proposed Rule 907(a)(3).

Duty of Registered SDR to Correct. Proposed Rule 905(b) would set forth the duties of a registered SDR relating to corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a counterparty, proposed Rule 905(b)(1) would require the registered SDR to verify the accuracy of the terms of the SBS and, following such verification, promptly correct the erroneous information contained in its system. Proposed Rule 905(b)(2) would further require that, if the erroneous transaction information contained any data that fall into the categories enumerated in proposed Rule 901(c) as information required to be reported in real time, the registered SDR would be required to publicly disseminate a corrected transaction report of the SBS promptly following verification of the SBS by the counterparties to the SBS, with an indication that the report relates to a previously disseminated transaction.

2. Proposed Use of Information

The SBS transaction information required to be reported pursuant to proposed Rule 905 would be used by registered SDRs, participants, the Commission, and other regulators. Participants would be able to use such information to evaluate and manage their own risk positions and satisfy their duties to report corrected information to a registered SDR. A registered SDR would need the required information to correct its own records, in order to maintain an accurate record of a participant's positions as well as to disseminate corrected information. The Commission and other regulators would need the corrected information to have an accurate understanding of the market for surveillance and oversight purposes.

3. Respondents

Proposed Rule 905 would apply to participants of a registered SDR. As noted above, the Commission has estimated that there may be 1,000 entities regularly engaged in the CDS marketplace. In addition, the Commission estimates that there may be up to 4,000 SBS counterparties that transact SBSs much less frequently. The Commission preliminarily believes that these SBS counterparties would not be reporting parties. However, these additional 4,000 counterparties would be "participants" as defined by proposed Rule 900. Accordingly, with respect to burdens applicable to all SBS counterparties, the Commission preliminarily believes that it is reasonable to use the estimate of 5,000 respondents for purposes of estimating collection of information burdens under the PRA.

Proposed Rule 905 also would apply to registered SDRs. As noted above, the Commission preliminarily estimates there would be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission preliminarily believes that promptly submitting an amended transaction report to the appropriate registered SDR after discovery of an error as required under proposed Rule 905(a)(2) would impose a burden on reporting parties. Likewise, the Commission preliminarily believes that promptly notifying the relevant reporting party after discovery of an error as required under proposed Rule 905(a)(1) would impose a burden on non-reporting-party participants.

With respect to reporting parties, the Commission preliminarily believes that proposed Rule 905(a) would impose an initial, one-time burden associated with designing and building the reporting party's reporting system to be capable of submitting amended SBS transactions to a registered SDR. In addition, reporting parties would be required to support and maintain the error reporting function.[230]

The Commission preliminarily believes that designing and building appropriate reporting system functionality to comply with proposed Rule 905(a)(2) would be a component of, and represent an incremental "add-on" to, the cost to build a reporting system and develop a compliance function as required under proposed Rule 901. Based on discussions with industry participants, the Commission preliminarily estimates this incremental burden to be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with proposed Rule 901,[231] plus 10% of the corresponding one-time and annual burdens associated with developing the reporting party's overall compliance program required under proposed Rule 901.[232] Thus, for reporting parties, the Commission preliminarily estimates that proposed Rule 905(a) would impose an initial (first-year) aggregate burden of 52,400 hours, which is 52.4 burden hours per reporting party,[233] and an

[230] The Commission preliminarily believes that the actual submission of amended transaction reports required under proposed Rule 905(a)(2) would not result in a material burden because this would be done electronically though the reporting system that the reporting party must develop and maintain to comply with proposed Rule 901. The burdens associated with such a reporting system are addressed in the Commission's analysis of proposed Rule 901. *See supra* Section XIII.B.4.a and notes 193–195.

[231] *See supra* notes 194 and 198.

[232] *See supra* notes 201 and 202.

[233] This figure is calculated as follows: [(((172 burden hours one-time development of reporting system) × (0.05)) + ((80 burden hours annual maintenance of reporting system) × (0.05)) + ((180

ongoing aggregate annualized burden of 25,800 hours, which is 25.8 burden hours per reporting party.[234]

With regard to non-reporting-party participants, the Commission preliminarily believes that proposed Rule 905(a) would impose an initial and ongoing burden associated with promptly notifying the relevant reporting party after discovery of an error as required under proposed Rule 905(a)(1). The Commission preliminarily estimates that the annual burden would be 2,920,000 hours, which corresponds to 730 burden hours per non-reporting-party participant.[235] This figure is based on the Commission's preliminary estimates of (1) 4,000 non-reporting-party participants; (2) 11 transactions per day per non-reporting-party participant; [236] and (3) an error rate of one-third (33%),[237] or approximately 4 transactions per day per non-reporting-party participant.

Proposed Rule 905(b) would require a registered SDR to develop protocols regarding the reporting and correction of erroneous information. The Commission preliminarily believes, however, that this duty would represent only a minor extension of other duties for which the Commission is estimating burdens, and consequently, would not impose substantial additional burdens on a registered SDR. A registered SDR would be required to have the ability to collect and maintain SBS transaction reports and update relevant records under the SDR Registration Proposing Release.[238] Likewise, a registered SDR would have the capacity to disseminate additional, corrected SBS transaction reports under proposed Rule 902. The Commission preliminarily believes that the burdens associated with proposed Rule 905—including systems development, support, and maintenance—are addressed in the Commission's analysis of those other rules. Thus, the Commission preliminarily believes that proposed Rule 905(b) would impose only an incremental additional burden on registered SDRs. The Commission preliminarily estimates that to develop and publicly provide the necessary protocols would impose on each registered SDR an initial one-time burden of approximately 730 burden hours.[239] The Commission estimates that to review and update such protocols on an ongoing basis would impose an annual burden on each SDR of approximately 1,460 burden hours.[240]

Accordingly, the Commission preliminarily estimates that the initial (first-year) aggregate annualized burden on registered SDRs under proposed Rule 905 would be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[241] The Commission further preliminarily estimates that the ongoing aggregate annualized burden on registered SDRs under proposed Rule 905 would be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[242]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is proposing the SDR Registration Proposed Rules, which would include recordkeeping requirements for SBS transaction data received by a registered SDR pursuant to proposed Regulation SBSR.[243] Specifically, proposed Rule 13n–5(b)(5) under the Exchange Act would require a registered SDR to maintain the transaction data for not less than five years after the applicable SBS expires and historical positions and historical market values for not less than five years. Accordingly, SBS transaction reports received by a registered SDR pursuant to proposed Rule 905 would be required to be retained for not less than five years.

With respect to information disseminated by a registered SDR in compliance with proposed Rule 905(b)(2), proposed Rule 13n–7(b) under the Exchange Act would require a registered SDR to keep and preserve at least one copy of all documents, including all policies and procedures required by the Exchange Act and the rules or regulations thereunder for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination.[244] This requirement would encompass amended real-time SBS transaction reports disseminated by the registered SDR. Accordingly, SBS transaction reports disseminated by a registered SDR pursuant to proposed Rule 905(b)(2) would be required to be retained for not less than five years.

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

Information collected pursuant to proposed Rule 905 would be widely available to the extent that it corrects information previously reported pursuant to proposed Rule 901(c) and incorporated into SBS transaction reports that are publicly disseminated by a registered SDR pursuant to proposed Rule 902. Generally, however, a registered SDR would be under an obligation to maintain the confidentiality of any information collected pursuant to proposed Rule 901, pursuant to Sections 13(n)(5) of the Exchange Act and proposed Rule 13n–9 thereunder.[245] To the extent that the Commission receives confidential information pursuant this collection of

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burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.1))) × (1,000 reporting parties)] = 52,400 burden hours, which is 52.4 burden hours per reporting party.

[234] This figure is calculated as follows: [(((80 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.1))) × (1,000 reporting parties)] = 25,800 burden hours, which is 25.8 burden hours per reporting party.

[235] This figure is based on the following: [(4 error notifications per non-reporting-party participant per day) × (365 days/year) × (Compliance Clerk at 0.5 hours/report) × (4,000 non-reporting-party participants)] = 2,920,000 burden hours, which corresponds to 730 burden hours per non-reporting-party participant. The Commission preliminarily believes that participants already monitor their SBS transactions and positions in the ordinary course of business. Thus, the Commission preliminarily believes that, as a practical matter, proposed Rule 905 would not result in any significant new burdens for these participants.

[236] This figure is based on the following: [((15,458,824 estimated annual SBS transactions)/(4,000 estimated non-reporting-party participants))/(365 days/year)] = 10.58, or approximately 11 transactions per day. *See supra* note 185. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[237] In other words, the Commission is estimating that one-third of all SBS transactions will require an amended report to be submitted to the registered SDR pursuant to proposed Rule 905(a). For purposes of its PRA analysis, the Commission is further assuming that the both the non-reporting-party participant and the reporting party discover all errors. The Commission recognizes that, as a practical matter, there may be instances where one party fails to detect an error.

[238] *See supra* note 6.

[239] This figure is based on the following: [(Sr. Programmer at 80 hours) + (Compliance Manager at 160 hours) + (Compliance Attorney at 250 hours) + (Compliance Clerk at 120 hours) + (Sr. System Analyst at 80 hours) + (Director of Compliance at 40 hours)] = 730 burden hours.

[240] This figure is based on the following: [(Sr. Programmer at 160 hours) + (Compliance Manager at 320 hours) + (Compliance Attorney at 500 hours) + (Compliance Clerk at 240 hours) + (Sr. System Analyst at 160 hours) + (Director of Compliance at 80 hours)] = 1,460 burden hours.

[241] This figure is based on the following: [(730 burden hours to develop protocols) + (1,460 burden hours annual support)) × (10 registered SDRs)] = 21,900 burden hours, which corresponds to 2,190 burden hours per registered SDR.

[242] This figure is based on the following: [(1,460 burden hours annual support) × (10 registered SDRs)] = 14,600 burden hours, which corresponds to 1,460 burden hours per registered SDR.

[243] *See* SDR Registration Proposing Release, *supra* note 6.

[244] *See id.*

[245] *See* SDR Registration Proposing Release, *supra* note 6.

information, such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

222. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

223. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 905? In particular, how many entities would incur collection of information burdens pursuant to proposed Rule 905?

224. Would covered entities incur any initial burdens associated with systems design, programming, expanding systems capacity, and establishing compliance programs pursuant to proposed Rule 905?

225. What entities may be subject to proposed Rule 905? In what ways would these entities be impacted? Would any such entity or class of entities be impacted differently than others?

226. How many entities might be impacted by proposed Rule 905? Are the Commission's preliminary estimates as to the number of participants in the SBS market that would be required to report and retain information pursuant to the proposed rule accurate?

227. Are there additional burdens that the Commission has not addressed in its preliminary burden estimates?

228. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

229. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

G. Other Duties of Participants—Rule 906 of Regulation SBSR

Certain provisions of proposed Rule 906 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 906—Duties of All Participants."

1. Summary of Collection of Information

Proposed Rule 906(a) would set forth a procedure designed to ensure that a registered SDR obtains relevant ID information for both counterparties to a SBS, not just the IDs of the reporting party. Proposed Rule 906(a) would require a registered SDR to identify any SBS reported to it for which it does not have participant ID and (if applicable) broker ID, desk ID, and trader ID of each counterparty. Proposed Rule 906(a) would further require the registered SDR, once a day, to send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks participant ID and (if applicable) broker ID, desk ID, and trader ID. Additionally, under proposed Rule 906(a), a participant that receives such a report would be required to provide the missing ID information to the registered SDR within 24 hours.

Proposed Rule 906(b) would require a participant to provide a registered SDR with information identifying the participant's ultimate parent(s) and affiliate(s) that may also be participants of the registered SDR. Additionally, under proposed Rule 906(b), the participant would be required to promptly notify the registered SDR of any changes to the information provided.

Proposed Rule 906(c) would require each participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any SBS transaction reporting obligations in a manner consistent with proposed Regulation SBSR and the registered SDR's applicable policies and procedures. In addition, proposed Rule 906(c) would require each such participant to review and update its policies and procedures at least annually.

2. Proposed Use of Information

The information required to be provided by participants pursuant to proposed Rule 906(a) would complete missing elements of SBS transaction reports so that the registered SDR would have, and could make available to regulators, accurate and complete records for reported SBS.

Similarly, proposed Rule 906(b) would be used to ensure that the registered SDR would have, and could make available to regulators, accurate and complete records for reported SBS regarding participant parents and affiliates. The Commission would use this information in its ongoing efforts to monitor and enforce compliance with the federal securities laws, including proposed Regulation SBSR.

The policies and procedures required under proposed Rule 906(c) would be used by participants to aid in their compliance with proposed Regulation SBSR, and also used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including proposed Regulation SBSR.

3. Respondents

Proposed Rules 906(a) and (b) would apply to all participants of registered SDRs. Based on the information currently available to the Commission, the Commission preliminarily estimates that there may be up to 5,000 participants. Proposed Rule 906(c) would apply to participants that are SBS dealers or major SBS participants. The Commission believes that such entities would constitute the majority of reporting parties, so that it is reasonable to use the figure of 1,000 respondents for purposes of estimating collection of information burdens under the PRA.

Proposed Rule 906 also imposes certain duties on registered SDRs. As noted above, the Commission is preliminarily estimating that there would be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Proposed Rule 906(a) would require a registered SDR, once a day, to send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks participant ID and (if applicable) broker ID, desk ID, and trader ID. The Commission preliminarily estimates that there would be a one-time, initial burden of 112 burden hours for a registered SDR to create a report template and develop the necessary systems and processes to produce a daily report required by proposed Rule 906(a).[246] Further, the Commission preliminarily estimates that there would be an ongoing annualized burden of 308 burden hours for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports.[247]

Accordingly, the Commission preliminarily estimates that the initial

[246] The Commission has derived the total estimated burdens based on the following estimates, which are based on the information provided to the Commission: (Senior Systems Analyst at 40 hours) + (Sr. Programmer at 40 hours) + (Compliance Manager at 16 hours) + (Director of Compliance at 8 hours) + (Compliance Attorney at 8 hours) = 112 burden hours.

[247] The Commission has derived the total estimated burdens based on the following estimates, which are based on the information provided to the Commission: (Senior Systems Analyst at 24 hours) + (Sr. Programmer at 24 hours) + (Compliance Clerk at 260 hours) = 308 burden hours.

aggregate annualized burden for registered SDRs under proposed Rule 906(a) would be 4,200 burden hours, which corresponds to 420 burden hours per registered SDR.[248] The Commission preliminarily estimates that the ongoing aggregate annualized burden for registered SDRs under proposed Rule 906(a) would be 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.[249]

In addition, proposed Rule 906(a) would require any participant that receives a daily report from a registered SDR to provide the missing UICs to the registered SDR within 24 hours. The Commission preliminarily estimates participants that are reporting parties would bear no initial or ongoing burdens under proposed Rule 906(a). This estimate is based on the Commission's preliminary belief that a reporting party would structure its reporting program to be in compliance with proposed Regulation SBSR, and consequently, would send complete information as relates to itself for each SBS transaction submitted to a registered SDR. The Commission further preliminarily estimates that the initial and ongoing annualized burden under proposed Rule 906(a) to participants that are not reporting parties would be 1,277,500 burden hours, which corresponds to 255.5 burden hours per participant.[250] This figure is based on the Commission's preliminary estimates of (1) 5,000 participants; (2) 9 transactions per day per participant; [251] and (3) a missing information rate of 80%,[252] or approximately 7 transactions per day per participant.

Proposed Rule 906(b) would require every participant to provide the registered SDR an initial parent/affiliate report and subsequent reports, as needed. The Commission preliminarily estimates that each participant would submit two reports each year.[253] In addition, the Commission preliminarily estimates that there would be 5,000 participants and that each one may connect to two registered SDRs. Accordingly, the Commission preliminarily estimates that the initial and ongoing aggregate annualized burden associated with proposed Rule 906(b) would be 10,000 burden hours, which corresponds to 2 burden hours per participant.[254]

Proposed Rule 906(c) would require each participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any SBS transaction reporting obligations in a manner consistent with proposed Regulation SBSR and the registered SDR's applicable policies and procedures. Proposed Rule 906(c) would also require the review and updating of such policies and procedures at least annually. The Commission preliminary estimates that the one-time, initial burden for each covered participant to adopt written policies and procedures as required under proposed Rule 906(c) would be approximately 216 burden hours.[255] Drawing on the Commission's experience with other rules that require entities to establish and maintain policies and procedures,[256] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing.

In addition, the Commission preliminarily estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by proposed Rule 906(c), would be approximately 120 burden hours for each covered participant.[257] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission preliminarily estimates that the initial aggregate annualized burden associated with proposed Rule 906(c) would be 336,000 burden hours, which corresponds to 336 burden hours per covered participant.[258] The Commission preliminarily estimates that the ongoing aggregate annualized burden associated with proposed Rule 906(c) would be 120,000 burden hours, which corresponds to 120 burden hours per covered participant.[259]

Therefore, the Commission preliminarily estimates that the initial aggregate annualized burden associated with proposed Rule 906 would be 1,518,200 burden hours,[260] and the ongoing aggregate annualized burden would be 1,301,080 burden hours for all covered entities.[261]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is issuing the SDR Registration Proposing Release, which would include recordkeeping requirements for SBS transaction data received by a registered SDR pursuant to proposed Regulation SBSR.[262] Specifically, proposed Rule 13n–5(b)(5) under the Exchange Act would require a registered SDR to

[248] The Commission derived its estimate from the following: [(112 + 308 burden hours) × (10 registered SDRs)] = 4,200 burden hours, which corresponds to 420 burden hours per registered SDR.

[249] The Commission derived its estimate from the following: [(308 burden hours) × (10 registered SDRs)] = 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.

[250] This figure is based on the following: [(7 missing information reports per non-reporting-party participant per day) × (365 days/year) × (Compliance Clerk at 0.1 hours/report) × (5,000 participants)] = 1,277,500 burden hours, which corresponds to 255.5 burden hours per participant.

[251] This figure is based on the following: [((15,458,824 estimated annual SBS transactions)/5,000 estimated participants))/(365 days/year)] = 8.47, or approximately 9 transactions per day. *See supra* note 185. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[252] In other words, the Commission is estimating that 80% of the time the reporting party would not know and thus would not be able to report the necessary UICs of its counterparty. Therefore, a registered SDR would have to obtain the missing UICs through the process described in proposed Rule 906(a).

[253] During the first year, the Commission preliminarily estimates each participant would submit its initial report and one update report. In subsequent years, the Commission preliminarily estimates that each participant would submit two update reports.

[254] This figure is based on the following: [(Compliance Clerk at 0.5 hours per report) × (2 reports/year/SDR connection) × (2 SDR connections/participant) × (5,000 participants)] = 10,000 burden hours, which corresponds to 2 burden hours per participant.

[255] This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per covered participant.

[256] *See* Securities Exchange Act Release Nos. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010) (proposing Rule 613 of Regulation NMS); 61908 (April 14, 2010), 75 FR 21456 (proposing large trader reporting system).

[257] This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per covered participant.

[258] This figure is based on the following: [(216 + 120 burden hours) × (1,000 covered participants)] = 336,000 burden hours.

[259] This figure is based on the following: [(120 burden hours) × (1,000 covered participants)] = 120,000 burden hours.

[260] This figure is based on the following: [(4,200 burden hours for registered SDRs under proposed Rule 906(a)) + (1,277,500 burden hours for non-reporting-party participants under proposed Rule 906(a)) + (10,000 burden hours for participants under proposed Rule 906(b)) + (336,000 burden hours for covered participants under proposed Rule 906(c))] = 1,627,700 burden hours.

[261] This figure is based on the following: [(3,080 burden hours for registered SDRs under proposed Rule 906(a)) + (1,277,500 burden hours for non-reporting-party participants under proposed Rule 906(a)) + (10,000 burden hours for participants under proposed Rule 906(b)) + (120,000 burden hours for covered participants under proposed Rule 906(c))] = 1,410,580 burden hours.

[262] *See supra* note 6.

maintain the transaction data for not less than five years after the applicable SBS expires and historical positions and historical market values for not less than five years.

With regard to other information that a registered SDR may receive from participants pursuant to proposed Rule 906, proposed Rule 13n–7(b) would require a registered SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination.[263] This requirement would encompass materials received by a registered SDR from participants pursuant to proposed Rule 906.

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

A registered SDR would be under an obligation to maintain the confidentiality of any information collected pursuant to proposed Rule 906. To the extent that the Commission receives confidential information pursuant this collection of information, such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

230. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

231. In what ways would entities covered by Rule 906 be impacted? Would any such entity or class of entities be impacted differently than others?

232. What would be the burdens on participants to provide to a registered SDR and keep updated information about their ultimate parents and affiliates that are also participants?

233. How many entities might be impacted by proposed Rule 906? Are the Commission's preliminary estimates as to the number of participants in the SBS market that would be required to report and retain information pursuant to the proposed rule accurate?

234. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

235. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

236. Would proposed Rule 906 create any additional burdens not discussed here? If so, please identify and quantify these burdens.

H. Policies and Procedures of Registered Security-Based Swap Data Repositories—Rule 907 of Regulation SBSR

Certain provisions of proposed Rule 907 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 907—Policies and Procedures of Registered Security-Based Swap Data Repositories." The Commission is applying for a new OMB Control Number for this collection in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13.

1. Summary of Collection of Information

Proposed Rule 907 would require a registered SDR to establish and maintain compliance with written policies and procedures: (1) That enumerate the specific data elements of a SBS or a life cycle event that a reporting party would report; (2) that specify data formats, connectivity requirements, and other protocols for submitting information; (3) for specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by proposed Rule 905(b)(2), which would denote that the report relates to a previously disseminated transaction; (4) describing how reporting parties shall report and, consistent with the enhancement of price discovery, how the registered SDR shall publicly disseminate, reports of, and adjustments due to, life cycle events; SBS transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market; (5) for assigning transaction IDs and UICs related to its participants; and (6) for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using applicable UICs.

In addition, proposed Rule 907(b)(1) would require a registered SDR to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SBS instruments reported to the registered SDR in accordance with the criteria and formula for determining block size as specified by the Commission.

Under proposed Rules 907(c) and (d), a registered SDR would be required to make its policies and procedures publicly available on its website, and review, and update as necessary, its policies and procedures at least annually, indicating the date on which they were last reviewed. Finally, proposed Rule 907(e) would require a registered SDR to have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to proposed Regulation SBSR and the registered SDR's policies and procedures thereunder.

2. Proposed Use of Information

The policies and procedures required under proposed Rule 907 would be used by registered SDRs to aid in their compliance with Regulation SBSR, and also used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including proposed Regulation SBSR. These policies and procedures also would be used by participants of a registered SDR to understand the specific data elements of SBS transactions that they must report, the specific data formats they would be required to use, and for understanding what constitutes a block trade in a SBS instrument. Furthermore, market participants would use the information about block trades calculated and publicized by a registered SDR to understand the block trade thresholds for specific SBS instruments, and for understanding the registered SDR's dissemination protocols generally. Finally, any information or reports provided to the Commission pursuant to proposed Rule 907(e) would be used by the Commission to assess the timeliness, accuracy, and completeness of data reported pursuant to proposed Regulation SBSR and as part of its general oversight of the SBS markets.

[263] *See id.*

3. Respondents

As noted above, the Commission preliminarily estimates that ten registered SDRs would be subject to proposed Rule 907.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission preliminarily estimates that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under proposed Rule 907 would be approximately 15,000 hours.[264] Drawing on the Commission's experience with other rules that require entities to establish and maintain policies and procedures,[265] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing.[266] In addition, the Commission preliminarily estimates the annual burden of maintaining such policies and procedures, including a full review at least annually, making available its policies and procedures on the registered SDR's website, and compiling statistics on non-compliance, as required under proposed Rule 907, would be approximately 30,000 hours for each registered SDR.[267] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining relevant systems and internal controls systems, calculating and publishing block trade thresholds, performing necessary testing, monitoring participants, and compiling data.

The Commission preliminarily believes that, as part of its core functions, a registered SDR would have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to proposed Regulation SBSR and the registered SDR's policies and procedures. Proposed Rule 13n–5(b) would require a registered SDR to establish, maintain, and enforce written policies and procedures to satisfy itself by reasonable means that the transaction data that has been submitted to the security-based swap data repository is accurate, and also to ensure that the transaction data and positions that it maintains are accurate.[268] The Commission preliminarily believes that these capabilities would enable a registered SDR to provide the Commission information or reports as may be requested pursuant to proposed Rule 907(e). Thus, the Commission does not believe that proposed Rule 907(e) would impose any additional burdens on a registered SDR.

Based on the Commission's experience and input from self-regulatory organizations, the Commission preliminarily believes that a registered SDR would need to hire 15 full-time staff to fulfill the obligations outlined in proposed Rule 907. Accordingly, the Commission preliminarily estimates that the initial annualized burden associated with proposed Rule 907 would be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[269] The Commission preliminarily estimates that the ongoing annualized burden associated with proposed Rule 907 would be approximately 30,000 hours per registered SDR,[270] which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.[271]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is proposing the SDR Proposed Rules.[272] Specifically, proposed Rule 13n–7(b) would require a registered SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination.[273] This requirement would encompass policies and procedures established by a registered SDR pursuant to proposed Rule 907. This requirement would also encompass any information or reports provided to the Commission pursuant to proposed Rule 907(e).

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

All of the policies and procedures required by proposed Rule 907 would have to be made available by a registered SDR on its website and would not, therefore, be confidential. Any information obtained by the Commission from a registered SDR pursuant to proposed Rule 907(e) relating to the timeliness, accuracy, and completeness of data reported to the registered SDR would be for regulatory purposes and would be kept confidential.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

1. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

2. How many entities might be impacted by proposed Rule 907? Are the Commission's preliminary estimates as to the number of registered SDRs that would be subject to proposed Rule 907 accurate?

3. How accurate are the Commission's preliminary estimates of the burdens of

[264] This figure is based on the following: [(Sr. Programmer at 1,667 hours) + (Compliance Manager at 3,333 hours) + (Compliance Attorney at 5,000 hours) + (Compliance Clerk at 2,500 hours) + (Sr. System Analyst at 1,667 hours) + (Director of Compliance at 833 hours)] = 15,000 burden hours per registered SDR.

[265] *See infra* at note 256.

[266] This figure includes time necessary to design and program systems and implement policies and procedures to calculate and publish block trade thresholds for all SBS instruments reported to the registered SDR, as would be required by proposed Rule 907(b). It also includes time necessary to design and program systems and implement policies and procedures to determine which reported trades would not be considered block trades. This figure also includes time necessary to design and program systems and implement policies and procedures to assign certain IDs, as would be required by proposed Rule 907(a)(5).

[267] This figure is based on the following: [(Sr. Programmer at 3,333 hours) + (Compliance Manager at 6,667 hours) + (Compliance Attorney at 10,000 hours) + (Compliance Clerk at 5,000 hours) + (Sr. System Analyst at 3,333 hours) + (Director of Compliance at 1,667 hours)] = 30,000 burden hours per registered SDR.

[268] *See* SDR Registration Proposing Release, *supra* note 6, proposed Rules 13n–5(b)(1)(iii) and 13n–5(b)(3) under the Exchange Act.

[269] This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) × (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

[270] This figure is based on the following: [(Sr. Programmer at 3,333 hours) + (Compliance Manager at 6,667 hours) + (Compliance Attorney at 10,000 hours) + (Compliance Clerk at 5,000 hours) + (Sr. System Analyst at 3,333 hours) + (Director of Compliance at 1,667 hours)] = 30,000 burden hours per registered SDR.

[271] This figure is based on the following: [(30,000 burden hours per registered SDR) × (10 registered SDRs)] = 300,000 ongoing, annualized aggregate burden hours.

[272] *See* SDR Registration Proposing Release, *supra* note 6.

[273] *See id.,* proposed Rule 13n–7(b) under the Exchange Act.

the proposed collection of information associated with proposed Rule 907?

4. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

5. Does the Commission's proposed Rule 907 minimize burdens by reserving to registered SDRs the flexibility to develop and implement tailored policies and procedures, or would more specificity in the rule text better minimize associated burdens?

6. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

7. Would proposed Rule 907 create any additional burdens not discussed here? If so, please identify and quantify these burdens.

I. Jurisdictional Matters—Rule 908 of Regulation SBSR

The Commission preliminarily does not believe that proposed Rule 908 would be a "collection of information" within the meaning of the PRA, as the rule would merely describe the jurisdictional reach of proposed Regulation SBSR. The Commission requests comment on this preliminary assessment of proposed Rule 908. Would proposed Rule 908 impose any collection of information requirements that the Commission has not considered?

J. Registration of Security-Based Swap Data Repository as Securities Information Processor—Rule 909 of Regulation SBSR

Certain provisions of proposed Rule 909 contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 909—Registration of Security-Based Swap Data Repository as Securities Information Processor."

1. Summary of Collection of Information

Proposed Rule 909 would require a registered SDR to register with the Commission as a SIP. To comply with this requirement, a registered SDR would need to submit a Form SIP.[274] As a registered SIP, a registered SDR would be required to keep its Form SIP current, and submit amendments as required by Rule 609(b) of Regulation NMS under the Exchange Act.[275]

2. Proposed Use of Information

The information required by proposed Rule 909 would permit the Commission to register a registered SDR as a SIP, and to maintain updated information about the registered SDR/SIP over time.

3. Respondents

The Commission preliminarily estimates that there would be ten registered SDRs. Thus, the Commission preliminarily estimates that ten entities would have to register as SIPs as required by proposed Rule 909.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

As described in the SDR Registration Proposing Release,[276] an entity wishing to register with the Commission as a registered SDR would have to submit proposed Form SDR, which is modeled after existing Form SIP. The Commission has estimated the burden for completing Form SIP to be 400 hours. Therefore, the Commission also has estimated the burden for completing proposed Form SDR to be 400 hours (specifically, 150 hours of legal compliance work and 250 hours of clerical compliance work).[277] Any entity that is required to complete proposed Form SDR also would have to complete Form SIP. Because of the substantial overlap in the forms, much of the burden for completing Form SIP would be subsumed in completing proposed Form SDR. Therefore, the Commission preliminarily estimates that, having completed a proposed Form SDR, an entity would need only one-quarter of the time to then complete Form SIP, or 100 hours (specifically, 37.5 hours of legal compliance work and 62.5 hours of clerical compliance work). Accordingly, the Commission is preliminarily estimating that the one-time initial registration burden for all registered SDR/SIPs would be 1,000 hours.[278]

With regard to ongoing burdens, the Commission preliminarily estimates that the aggregate annualized burden for providing amendments to Form SIP would be one-tenth of the burden to complete the initial form or 400 burden hours, which corresponds to 40 burden hours for each registered SDR. This figure is based on a preliminary estimate that each of ten registered SDRs would submit one amendment on Form SIP each year. SIP registration also would require a registered SDR to provide notice to the Commission of prohibitions or limitations on access to its services. The Commission preliminarily believes that the notice would be a simple form, and that prohibitions or limitations on access to information provided by a registered SDR would be not be prevalent. Thus, the Commission does not believe that providing such notice would result in any material burden. The Commission solicits comments as to the accuracy of these estimates.

5. Recordkeeping Requirements

Pursuant to proposed Rule 13n–7(b) under the Exchange Act,[279] a registered SDR would be required to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination. This requirement would encompass any regulatory documents and related work papers completed by the registered SDR as part of its business, including Form SIP as required by proposed Rule 909.

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

Form SIP is not confidential.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

8. How many entities might be impacted by proposed Rule 909? Are the Commission's preliminary estimates as to the number of registered SDRs that would be subject to proposed Rule 909 accurate?

9. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 909? Given that a SDR would be required to complete Form SDR to register with the Commission, how long would it take to also complete Form SIP?

10. How many amendments per year would a registered SDR/SIP have to file to Form SIP? What would be the average burden per amendment?

[274] 17 CFR 249.1001.

[275] 17 CFR 242.609(b).

[276] *See supra* note 6.

[277] This figure is based on the following: [(Compliance Attorney at 150 hours) + (Compliance Clerk at 250 hours)] = 400 burden hours per SDR. *See* SDR Registration Proposing Release, *supra* note 6 at notes 183 and 234.

[278] This figure is based on the following: [(Compliance Attorney at 37.5 hours) + (Compliance Clerk at 62.5 hours) × (10 registrants)] = 400 burden hours.

[279] *See* SDR Registration Proposing Release, *supra* note 6.

11. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

12. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

13. Would proposed Rule 909 or SIP registration create burdens for registered SDRs or other entities not contemplated here? If so, please identify and quantify these burdens.

K. Phase-In Period—Rule 910 of Regulation SBSR

The Commission preliminarily does not believe that proposed Rule 910 would be a "collection of information" within the meaning of the PRA. Proposed Rule 910 merely describes when a registered SDR and its participants would be required to comply with the various parts of proposed Regulation SBSR, and would not create any additional collection of information requirements. The Commission requests public comment on its burden estimates. The Commission also solicits comment whether proposed Rule 910 imposes any collection of information requirements that the Commission has not considered.

L. Prohibition During Phase-In Period—Rule 911 of Regulation SBSR

The Commission preliminarily does not believe that proposed Rule 911 would be a "collection of information" within the meaning of the PRA. Proposed Rule 911 would restrict the ability of a reporting party to report a SBS to one registered SDR rather than another, but would not otherwise create any duties or impose any collection of information requirements beyond those already required by proposed Rule 901. The Commission requests public comment on its burden estimates. The Commission also solicits comment whether proposed Rule 911 imposes any collection of information requirements that the Commission has not considered.

M. Amendments to Rule 31

The proposed amendments to Rule 31 under the Exchange Act do not contain any "collection of information requirements" within the meaning of the PRA. Rule 31(a)(11) sets forth a list of "exempt sales" to which Section 31 fees do not apply. The proposed amendment of Rule 31 would add "security-based swaps" to the list of "exempt sales," and thereby exempt SBSs from Section 31 fees. The proposed amendment would require no collection of information, nor would it impose any burden on parties to SBS transactions. The Commission requests public comment on its burden estimates. The Commission also solicits comment whether the proposed amendment to Rule 31 imposes any collection of information requirements that the Commission has not considered.

XIV. Cost-Benefit Analysis

On July 21, 2010, the President signed the Dodd-Frank Act into law. The Dodd-Frank Act was enacted to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system.[280] Subtitle B of Title VII designates the Commission to oversee the SBS markets and develop appropriate regulations.

The OTC derivatives markets, which have been described as opaque,[281] have grown exponentially in recent years [282] and are capable of affecting significant sectors of the U.S. economy. One of the primary goals of Title VII is to increase the transparency and efficiency of the OTC derivatives market and to reduce the potential for counterparty and systemic risk.[283]

The Dodd-Frank Act amends the Exchange Act to require the Commission to adopt rules providing for, among other things: (1) The reporting of SBS to a registered SDR or to the Commission; and (2) real-time public dissemination of SBS transaction, volume, and pricing information. To accomplish this mandate, the Commission today is proposing Regulation SBSR, a set of reporting and related rules for SBS transactions.

In general, proposed Regulation SBSR would provide for the reporting of SBS information that falls into three broad categories: (1) Information that must be reported in real time pursuant to proposed Rule 901(c); (2) additional information that must be reported pursuant to proposed Rule 901(d) within specified timeframes, depending on whether the transaction is traded or confirmed electronically or manually; and (3) life cycle events that must be reported pursuant to proposed Rule 901(e). Proposed Regulation SBSR would require registered SDRs to publicly disseminate certain SBS information in real time. Proposed Regulation SBSR would identify the SBS information that would be required to be reported, establish reporting obligations, and specify the timeframes for reporting and disseminating information. Proposed Regulation SBSR would require SBS market participants and registered SDRs to establish appropriate policies and procedures governing the transaction reporting process. In addition, proposed Regulation SBSR would require each registered SDR to register with the Commission as a SIP. Together, Regulation SBSR is designed to provide a more transparent market for SBSs.

Broadly, the Commission anticipates that Regulation SBSR may have several overarching benefits to the SBS markets. These include the following:

Improvements in Market Quality. The Commission's rules on reporting and public dissemination of SBS transaction data could have very significant benefits to the SBS market. Comprehensive, timely, and accurate reporting should allow for better regulation of the SBS market, which should promote greater confidence and participation in the market. Post-trade transparency could result in lower transaction costs, greater price competition, and greater participation in the market. These benefits could extend beyond the SBS market to the securities markets more generally, which are increasingly interconnected.

Improved Risk Management. As SBS market participants implement transaction reporting programs, they would be required to review their current positions in SBSs and report those open positions to a registered SDR. Incorporating all positions into an OMS sufficient to permit ongoing reporting as required under proposed Regulation SBSR could result in a direct and immediate benefit to market

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[280] *See* Public Law 111–203 Preamble.

[281] With respect to CDSs, for example, the Government Accountability Office found that "comprehensive and consistent data on the overall market have not been readily available," that "authoritative information about the actual size of the CDS market is generally not available," and that regulators currently are unable "to monitor activities across the market." Government Accountability Office, "Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps," GAO–09–397T (March 2009), at 2, 5, 27. *See* Robert E. Litan, "The Derivatives Dealers' Club and Derivatives Market Reform," Brookings Institution (April 7, 2010) at 15–20; Michael Mackenzie, *Era of an opaque swaps market ends,* Fin. Times (June 25, 2010).

[282] The BIS semi-annual reports on the swap markets summarizes developments in the OTC derivatives markets. The report breaks down trading volumes and other statistics for various classes of derivatives, including CDS, interest rate and foreign exchange derivatives, and equity and commodity derivatives. The report covers derivatives trading within the G10 countries. The most recent report, available at *http://www.bis.org/statistics/derstats.htm,* covers the period through the last quarter of 2009.

[283] *See* "Financial Regulatory Reform—A New Foundation: Rebuilding Financial Supervision and Regulation," U.S. Department of the Treasury, at 47–48 (June 17, 2009).

participants by potentially reducing the risk associated with current open positions. Further, because proposed Regulation SBSR would require market participants to inventory their positions in SBS to determine what needs to be reported, the proposal should enable more robust risk monitoring and management going forward.

Economies and Greater Efficiency. Automation and systems development associated with SBS transaction reporting required by proposed Regulation SBSR could provide market participants new tools to process transactions at a lower expense per transaction. Such increased efficiency would enable participants to handle increased volumes of SBSs with less marginal expense, or existing volumes of SBSs with greater efficiency. In addition, proposed Regulation SBSR is designed to further the development of internationally recognized standards for establishing reference identifiers in the financial services industry. A common set of reference identifiers for participants and products could yield significant efficiencies in both the public and private sectors. Information about financial firms operating in different functional areas and different jurisdictions could more readily be identified by regulators. In addition, financial firms could eliminate the use of multiple proprietary reference systems and move to a single, widely accepted system.

Improved Commission Oversight. SBS transaction reporting under proposed Regulation SBSR would provide a means for the Commission to gain a better understanding of the SBS market—including aggregate positions both in specific SBS instruments and positions taken by individual entities or groups—by requiring transaction data both on newly executed SBS and unexpired pre-enactment SBS to be reported to a registered SDR. The reporting of SBS transactions should thus provide the Commission and other regulators a better understanding of the current risks in the SBS market. For example, having such data available would help Commission staff to analyze the SBS market as a whole in a manner that is not possible currently. In this way, Regulation SBSR would support the Commission's supervisory function over the SBS market, as required by Congress in the Dodd-Frank Act.

Further, proposed Regulation SBSR should facilitate completing the reports the Commission is required to provide to Congress on SBSs and the SBS marketplace.[284]

[284] *See* Section 719 of the Dodd-Frank Act.

While the Commission believes that proposed Regulation SBSR would result in significant benefits to SBS market participants, the Commission is cognizant that the proposed rules would entail costs, as more fully discussed below. The proposed rules could, for example, require market participants to begin retaining additional data related to SBS transactions. The rules also could require market participants to modify existing internal processes and systems. The Commission estimates that the rules comprising proposed Regulation SBSR could affect 5,000 participants, including 1,000 reporting parties, and several million SBSs annually.

The Commission is sensitive to the costs and benefits associated with proposed Regulation SBSR. The Commission requests comment on the costs and benefits associated with the individual rules, and its cost-benefit analysis thereof, including identification and assessments of any costs and benefits not discussed in this analysis. The Commission also seeks comment on the accuracy of any of the benefits identified and also welcomes comments on the accuracy of any of the cost estimates. Finally, the Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits.

A. Definitions—Rule 900 of Regulation SBSR

1. Benefits

By defining key terms, proposed Rule 900 would provide increased clarity about the scope and application of proposed Regulation SBSR. This should help market participants subject to the proposal understand their obligations and make appropriate compliance plans. Clearly defined terms should also help the Commission in its oversight responsibilities.

2. Costs

The Commission preliminarily believes that proposed Rule 900 would not entail any material costs to market participants. Proposed Rule 900 would define terms used in Regulation SBSR. The rule would not impose any obligation or duty.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 900 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

248. How can the Commission more accurately estimate the costs and benefits of proposed Rule 900?

249. Would proposed Rule 900 create any additional costs or benefits not discussed here?

B. Reporting Obligations—Rule 901 of Regulation SBSR

Pursuant to proposed Rule 901, all SBS transactions must be reported. Together, sections (a), (b), (c), (d), (e), (h), and (i) of proposed Rule 901 set forth the parameters that SBS counterparties must follow to report SBS transactions to a registered SDR or, if there is no registered SDR that would accept the information, to the Commission. Proposed Rule 901(a) would specify which counterparty would be the "reporting party" for a SBS transaction. Proposed Rule 901(b) would require a reporting party to report the information required under proposed Rule 901 to a registered SDR or, if there is no registered SDR that would accept the information, to the Commission. Proposed Rule 901 divides the SBS information that would be required to be reported into three broad categories: (1) Information that would be required to be reported in real time pursuant to proposed Rule 901(c) and publicly disseminated pursuant to proposed Rule 902; (2) additional information that would be required to be reported pursuant to proposed Rule 901(d)(1) within the timeframes specified in proposed Rule 901(d)(2); and (3) life cycle events that must be reported pursuant to proposed Rule 901(e), the timeframes for which would vary depending on whether the transaction was executed and confirmed electronically or manually. The information that would be reported under proposed Rule 901(d)(1) would not be publicly disseminated. Proposed Rule 901(i) would require the reporting of the information detailed in proposed Rules 901(c) and (d), to the extent such information is available, for pre-enactment SBSs and transitional SBSs.

Proposed Rule 901(f) would require a registered SDR to time stamp, to the second, its receipt of any information submitted to it pursuant to proposed Rules 901(c), (d), or (e). Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS reported by a reporting party.

1. Benefits

The SBS transaction information required to be reported pursuant to proposed Rule 901 would benefit market participants and the SBS

marketplace. First, the Commission preliminarily believes that, by setting out the requirements for the reporting of each SBS transaction to a registered SDR, proposed Rule 901 would provide the registered SDR with the SBS transaction information necessary to support public dissemination, as required by proposed Rule 902. Additionally, by requiring real-time reporting of certain SBS transaction data, proposed Rule 901, together with proposed Rule 902, would provide the necessary framework to enable public dissemination of SBS transactions in real time as required under proposed Rule 902. Together, proposed Rules 901 and 902 will enable market participants and regulatory authorities to know the current state of the SBS markets and track it over time.

To comply with proposed Rule 901, reporting parties—which are the largest and most actively engaged participants in the SBS market—would likely need to establish and maintain OMSs capable of supporting real-time and additional reporting. The Commission anticipates that proposed Rule 901 would have the effect of promoting efforts by reporting parties to inventory their positions in SBSs, as each determines what information needs to be reported. This effect could encourage management review of internal procedures and controls by these reporting parties.

In addition, proposed Rule 901 would provide a means for the Commission to gain a better understanding of the SBS market, including the size and scope of that market, as the Commission would have access to data held by a registered SDR.[285] Having such data available should help Commission staff to analyze the SBS market as a whole and identify risks. In this way, proposed Rule 901 would support the Commission's supervisory function over the SBS market as required by Congress in the Dodd-Frank Act. Proposed Rule 901 also could facilitate the reports the Commission is required to provide to Congress on SBS and the SBS marketplace.[286]

The information reported by reporting parties pursuant to proposed Rule 901 would be used by registered SDRs to publicly disseminate real-time reports of SBS transactions, and to retain SBS transaction and position information for use by regulators. The reporting requirements of proposed Rule 901 are designed to ensure that important information about SBSs is reported and, ultimately available to market participants, through the market data feed disseminated by a registered SDR.

The Commission further preliminarily believes that the time stamp and transaction ID required to be added by the registered SDR under proposed Rules 901(f) and (g) would facilitate data management by the registered SDR, as well as market supervision and oversight by the Commission and other regulatory authorities.

Generally, the availability of additional market information, along with the ability of the Commission and other regulators to use information about SBS transactions reported to and held by registered SDRs, would result in more robust prudential and systemic regulation. The Commission and other regulators would use information about SBS transactions reported to and held by registered SDRs to conduct both prudential and systemic regulation, as well as to examine for improper behavior and to take enforcement actions, as appropriate. Specifying general types of information to be reported and publicly disseminated could increase the efficiency and level of standardization in the SBS market.

Proposed Rule 901 would prescribe only broad categories of SBS data to be reported. However, proposed Rule 907(a)(1) would require each registered SDR to enumerate specific data elements to be reported, and to specify acceptable data formats. This approach would provide for the efficient accommodation of evolving industry conventions in the reporting of SBS data. The requirement that all trades be reported to a registered SDR for public dissemination, regardless of trading venue, would reduce the coordination costs that would exist if numerous parties were independently disseminating SBS data. In this way, proposed Rule 901 would increase the uniformity in the SBS data that is disseminated under proposed Rule 902.

Proposed Rule 901(i) would also provide important benefits. By requiring reporting of pre-enactment and transitional SBS transactions, proposed Rule 901(i) would provide the Commission with insight as to outstanding notional size, number of transactions, and number and type of participants in the SBS market. This would provide a starting benchmark against which to assess the development of the SBS market over time and, thus, represents a first step toward a more transparent and well regulated market for SBSs. The data reported pursuant to proposed Rule 901(i) also could help the Commission prepare the reports that it is required to provide to Congress. Further, proposed Rule 901(i) would require market participants to inventory their positions in SBS to determine what information needs to be reported, which could benefit market participants by encouraging management review of their internal procedures and controls.

The transaction ID required by proposed Rule 901(g) also would provide an important benefit by facilitating the reporting of subsequent, related SBS transactions that may be submitted to a registered SDR (*e.g.,* a transaction report regarding a SBS life cycle event, or report to correct an error in a previously submitted report). Regulators also would benefit by having an easy way to refer to specific prior transactions.

Proposed Rule 901 would require reporting parties, to the extent they do not already possess systems for electronically capturing and transmitting data about their SBS transactions, to build or otherwise obtain such systems. Such systems would be necessary to report data within the timeframes set forth in proposed Rules 901(c) and (d), because it is unlikely that manual processes could capture and report in real time the numerous data elements relating to a SBS. There could be substantial benefits in the form of reduced operational risk in requiring all reporting parties to have such capability. Systematizing all SBS transaction information more quickly would support effective risk management, as counterparties, registered SDRs, clearing agencies (in some cases), and regulators would obtain accurate knowledge of new SBS transactions more quickly. Reporting parties that obtain such systems could see additional benefits in being able to process and risk manage their existing positions more effectively, or use their expanded capability to participate further in the SBS market.

Finally, proposed Rule 901 could result in significant benefits by encouraging the creation and widespread use of generally accepted standards for reference information. Proposed Rule 901 would require the reporting of a participant ID of each counterparty and, as applicable, the broker ID, desk ID, and trader ID of the reporting party or its broker. The Commission preliminarily believes that reporting of this information would help ensure effective oversight, enforcement, and surveillance of the SBS market by the Commission and other regulators. For example, activity could be tracked by a particular participant, a particular desk, or a particular trader. Regulators could observe patterns and connections in trading activity, or examine whether

[285] *See, e.g.,* 15 U.S.C. 78m(n)(5)(D) (requiring a registered SDR to provide the Commission with direct electronic access to its data).

[286] *See* Section 719 of the Dodd-Frank Act.

a trader had engaged in questionable trading activity across different SBS instruments. These identifiers also would facilitate aggregation and monitoring of the positions of SBS counterparties, which could be of significant benefit for prudential oversight and systemic risk management.

The Commission understands that some efforts have been undertaken—in both the private and public sectors, both domestically and internationally—to establish a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally. Such a system would be of significant benefit to regulators worldwide, as each market participant could readily be identified using a single reference code regardless of the jurisdiction or product market in which the market participant was engaging. Such a system also could be of significant benefit to the private sector, as market participants would have a common identification system for all counterparties and reference entities, and would no longer have to use multiple proprietary nomenclature systems. The enactment of the Dodd-Frank Act and the establishment of a comprehensive system for reporting and dissemination of SBSs—and for reporting and dissemination of swaps, under jurisdiction of the CFTC—offer a unique opportunity to facilitate the establishment of a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally.

2. Costs

a. For Reporting Parties

The proposed SBS reporting requirements would impose initial and ongoing costs on reporting parties. The Commission preliminarily believes that these costs would be a function of, among other things, the number of reportable SBS transactions and the data elements required to be collected for each SBS transaction.

The Commission obtained information from publicly available sources and consulted with industry participants in an effort to quantify the number of aggregate SBS transactions on an annual basis. According to publicly available data from DTCC, recently, there have been an average of approximately 36,000 CDS transactions per day,[287] corresponding to a total number of CDS transactions of approximately 13,140,000 per year. The Commission preliminarily believes that CDSs represent 85% of all SBS transactions.[288] Accordingly, and to the extent that historical market activity is a reasonable predictor of future activity,[289] the Commission preliminarily estimates that the total number of SBS transactions that would be subject to proposed Rule 901 on an annual basis would be approximately 15,460,000, which is an average of approximately 42 per reporting party per day.[290]

The Commission believes that SBS market participants would face three categories of costs to comply with proposed Rule 901. First, each market participant would have to develop an internal OMS capable of capturing relevant SBS transaction information so that it can be reported. The Commission understands that, because of the manner in which participants transact certain SBSs with certain transaction details being added post-execution, an OMS would likely need to link both to a market participant's trade desk—to permit real-time transaction reporting—and to the market participant's back office—to facilitate reporting of complete transactions as required under proposed Rule 901. The OMS would also have to include or be connected to a system designed to store SBS transaction information.

Second, each reporting party would have to implement a reporting mechanism. This would include a system that "packages" SBS transaction information from the entity's OMS, sends the information, and tracks it. The reporting mechanism would also include necessary data transmission lines to the appropriate registered SDR.

Third, each reporting party would have to establish an appropriate compliance program and support for the operation of the OMS and reporting mechanism. Relevant elements of the compliance program would include transaction verification and validation protocols, the ability to identify and correct erroneous transaction reports, necessary technical, administrative, and legal support. Additional operational support would include new product development, systems upgrades, and ongoing maintenance.

Based on conversations with industry participants, the Commission preliminarily believes that the reporting timeframes mandated by proposed Rules 901(c), (d), and (e) may be costly to achieve for reporting parties that do not currently have the capabilities to perform those functions in those time frames, requiring additional expenditure of resources to satisfy these requirements. For example, reporting parties that do not currently have the capability to capture SBS trade information and provide it to a registered SDR in real time would be required by proposed Regulation SBSR to obtain such capability.

Proposed Rule 901 would not provide an explicit list of data elements. Instead, proposed Regulation SBS would provide a registered SDR with flexibility to determine the specifics of the form and format for data to be reported under proposed Rule 901. Thus, to the extent reported and disseminated SBS transaction data are not uniform, market participants and regulators could face a cost to standardize and interpret them.

Internal Order Management. To comply with their reporting obligations, reporting parties would be required to develop and maintain an internal OMS that can capture relevant SBS data. The Commission preliminarily estimates that, to capture SBS data in a manner sufficient to facilitate reporting under proposed Rule 901 would impose an initial one-time aggregate cost of approximately $96,650,000, which corresponds to $96,650 for each reporting party.[291] This estimate includes an estimate of the costs required to amend internal procedures, design or reprogram systems, and implement processes to ensure that SBS transaction data are captured and preserved. The Commission further preliminarily estimates that capturing SBS data in a manner sufficient to facilitate reporting under proposed Rule 901 would impose an ongoing annual aggregate cost of approximately $73,144,000, which corresponds to

[287] *See, e.g., http://www.dtcc.com/products/derivserv/data_table_iii.php* (weekly data as updated by DTCC).

[288] The Commission's estimate is based on internal analysis of available SBS market data. The Commission is seeking comment about the overall size of the SBS market.

[289] The Commission notes that regulation of the SBS markets, including by means of proposed Regulation SBSR, could impact market participant behavior.

[290] These figures are based on the following: [13,140,000/0.85] = 15,458,824. [[(15,458,824 estimated SBS transactions)/(1,000 estimated reporting parties))/(365 days/year)] = 42.35, or approximately 42 transactions per day. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[291] This estimate is based on the following: [((Sr. Programmer (160 hours) at $285 per hour) + (Sr. Systems Analyst (160 hours) at $251 per hour) + (Compliance Manager (10 hours) at $294 per hour) + (Director of Compliance (5 hours) at $426 per hour) + (Compliance Attorney (20 hours) at $291 per hour) × (1,000 reporting parties)] = $96,650,000. The Commission preliminarily believes that information on SBS transactions is currently being retained by counterparties in the ordinary course of business, and as a practical matter should not result in any significant new burdens.

$73,144 for each reporting party.[292] This figure would include day-to-day support of the OMS, as well as an estimate of the amortized annual cost associated with system upgrades and periodic "re-platforming" (*i.e.,* implementing significant updates based on new technology). In addition, to capture and maintain relevant information and documents, the Commission preliminarily estimates that all reporting parties could incur an initial and ongoing aggregate annualized cost of $1,000,000, which corresponds to $1,000 for each reporting party.[293] The figure is an estimate of the hardware and associated maintenance costs for sufficient memory to capture and store SBS transactions, including redundant back-up systems.

Summing these costs, the Commission preliminarily estimates the initial aggregate annualized cost for reporting parties for internal order management under proposed Rule 901 would be $170,794,000, which corresponds to $170,794 for each reporting party.[294] The Commission further preliminarily estimates that the ongoing aggregate annualized costs on reporting parties for internal order management under proposed Rule 901 would be $74,144,000, which corresponds to $74,144 for each reporting party.[295]

SBS Reporting Mechanism. Each reporting party would incur initial one-time costs to establish connectivity with and report SBS transactions to a registered SDR. Depending on the number of SBS asset classes that a reporting party transacts in and which registered SDRs accept the resulting SBS transaction reports, multiple connections to different registered SDRs could be necessary. For purposes of estimating relevant costs, the Commission preliminarily estimates that, on average, each reporting party would require connections to two registered SDRs.[296]

On this basis, the Commission preliminarily estimates that the cost to establish and maintain connectivity to a registered SDR to facilitate the reporting required by proposed Rule 901 would impose an annual (first-year and ongoing) aggregate cost of approximately $200,000,000, which corresponds to $200,000 for each reporting party.[297] The Commission understands that many reporting parties already have established linkages to entities that may register as SDRs, which could significantly reduce the out-of-pocket costs associated with this establishing the reporting function contemplated by proposed Rule 901.

Moreover, the Commission believes that establishing a reporting mechanism for SBS transactions would impose internal costs on each reporting party, including the development of systems necessary to capture and send information from the entity's OMS to the relevant registered SDR, as well as corresponding testing and support. The Commission preliminarily estimates an initial one-time aggregate cost of $46,657,000, which corresponds to an initial one-time cost of $46,657 for each reporting party.[298] In addition, the Commission preliminarily estimates that reporting specific SBS transactions to a registered SDR as required by proposed Rule 901 would impose an annual aggregate cost (first-year and ongoing) of approximately $5,400,000, which corresponds to approximately $5,400 for each reporting party.[299]

Thus, the Commission preliminarily estimates the initial, aggregate annualized cost for reporting parties submitting SBS transaction reports under proposed Rule 901 would be $252,057,000, which corresponds to $252,057 for each reporting party.[300] The Commission further preliminarily estimates that the ongoing, aggregate annualized cost on reporting parties for submitting SBS transaction reports under proposed Rule 901 would be $205,400,000, which corresponds to $205,400 for each reporting party.[301]

Compliance and Ongoing Support. As stated above, in complying with proposed Rule 901, each reporting party also would need to establish and maintain an appropriate compliance program and support for the operation of the OMS and reporting mechanism, which would include transaction verification and validation protocols and necessary technical, administrative, and legal support. Additional operational support would include new product development, systems upgrades, and ongoing maintenance. The Commission preliminarily believes that initial costs associated with this aspect of proposed Rule 901—*i.e.,* the establishment of relevant compliance capability—would also involve in significant part the development of

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[292] This estimate is based on the following: [((Sr. Programmer (32 hours) at $285 per hour) + (Sr. Systems Analyst (32 hours) at $251 per hour) + (Compliance Manager (60 hours) at $294 per hour) + (Compliance Clerk (240 hours) at $59 per hour) + (Director of Compliance (24 hours) at $426 per hour + (Compliance Attorney (48 hours) at $291 per hour) × (1,000 reporting parties)] = $73,144,000.

[293] This estimate is based on discussions of Commission staff with various market participants and is calculated as follows: [$250/gigabyte of storage capacity × (4 gigabytes of storage) × (1,000 participants)] = $1,000,000. The Commission preliminarily believes that storage costs associated with saving relevant SBS information and documents would not vary significantly between the first year and subsequent years. Accordingly, the Commission has preliminarily estimated the initial and ongoing storage costs to be the same. Moreover, the Commission believes the per-entity annual data storage figure of $1,000 to be a reasonable average. Some reporting parties may face higher costs, while others would simply use existing storage resources.

[294] This estimate is based on the following: [(($96,650 + $73,144 + $1,000) × (1,000 reporting parties)] = $170,794,000, which corresponds to $170,794 burden hours per reporting party.

[295] This is estimate is based on the following: (($73,144 + $1,000) × 1,000 reporting parties) = $74,144,000.

[296] The Commission derived this estimate as follows. First, the Commission believes that initially there would be only a limited number of registered SDRs, and that the number would not exceed ten. Many reporting parties might transact in only some classes of SBSs. Thus, even if each registered SDR accepted transaction reports only for a single SBS asset class, the total number of connections needed by many reporting parties would likely be limited. The Commission also preliminarily believes that, for operational efficiency, a participant would seek to use only one registered SDR per asset class to obtain repository services. Next, reporting parties that required a significant number of connections to registered SDRs could engage a third party—a dealer or connectivity services provider—instead of independently establishing their own connections. Accordingly, the Commission preliminarily believes that one connection may suffice for many reporting parties.

[297] This estimate is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants for data reporting purposes. The Commission derived the total estimated expense from the following: ($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) × (2 SDR connections per reporting party) × (1,000 reporting parties) = $200,000,000.

[298] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (80 hours) at $285 per hour) + (Sr. Systems Analyst (80 hours) at $251 per hour) + (Compliance Manager (5 hours) at $294 per hour) + (Director of Compliance (2 hours) at $426 per hour) + (Compliance Attorney (5 hours) at $291 per hour) × (1,000 reporting parties)] = $46,657,000. The Commission preliminarily believes that information on SBS transactions is currently being retained by market participants in the ordinary course of business, and as a practical matter should not result in any significant new costs.

[299] The Commission preliminarily believes that the costs of having an operational reporting system capable of effectively processing these transactions are covered in the cost estimates for a compliance and ongoing support system. *See infra* notes 302 to 305. The Commission preliminarily believes that the actual reporting of transactions represents an incremental additional cost. The referenced figure is based on discussions with various market participants and is calculated as follows: [(Compliance Clerk (40 hours) at $59 per hour) + (Sr. Computer Operator (40 hours) at $76 per hour)) × (1,000 reporting parties)] = $5,400,000.

[300] This estimate is based on the following: (($46,657 + $5,400 + $200,000) × (1,000 reporting parties)) = $252,057,000, which corresponds to $252,057 per reporting party.

[301] This estimate is based on the following: (($5,400 + $200,000) × (1,000 reporting parties)) = $205,400,000, which corresponds to $205,400 per reporting party.

appropriate policies and procedures, which, for those participants who are SBS dealers or major SBS participants, is addressed in connection with proposed Rule 906(c). A reporting party would need to design its OMS to include tools to ensure accurate, complete reporting and employ appropriate technical and compliance staff to maintain and support the operation of its OMS on an ongoing basis.

The Commission preliminarily estimates that designing and implementing an appropriate compliance and support program would impose an initial one-time aggregate cost of approximately $51,590,000, which corresponds to a cost of $51,590 for each reporting party.[302] The Commission further preliminarily estimates that maintaining its compliance and support program would impose an ongoing annual aggregate cost of approximately $36,572,000, which corresponds to a cost of $36,572 for each reporting party.[303] This figure includes day-to-day support of the OMS, as well as an estimate of the amortized annual cost associated with system upgrades and periodic "re-platforming."

Therefore, the Commission preliminarily estimates the initial aggregate annualized costs to reporting parties for compliance and ongoing support under proposed Rule 901 would be $88,162,000, which corresponds to $88,162 for each reporting party.[304] The Commission further preliminarily estimates that the ongoing aggregate annualized cost on reporting parties for compliance and ongoing support under proposed Rule 901 would be $36,572,000, which corresponds to $36,572 for each reporting party.[305]

Summing these costs, the Commission preliminarily estimates that the initial, aggregate annualized costs associated with proposed Rule 901 would be $511,013,000, which corresponds to $511,013 per reporting party.[306] The Commission preliminarily estimates that the ongoing aggregate annualized costs associated with proposed Rule 901 would be $316,116,000, which corresponds to $316,116 per reporting party.[307]

Finally, the Commission notes that it is possible that the costs associated with required reporting pursuant to proposed Regulation SBSR could represent a barrier to entry for new, smaller firms that might not have the ability or desire to comply with these reporting requirements. To the extent that proposed Regulation SBSR causes new firms not to enter the SBS market, this would be a cost of the proposal. Nevertheless, the Commission preliminarily believes that firms would be able to contract with third-party service providers, which could facilitate their compliance with proposed Regulation SBSR. Accordingly, the Commission preliminarily does not believe it likely that proposed Rule 901 would, as a practical matter, act as a barrier to new entrants. The Commission requests comment on this issue.

Reference information. The Commission, in proposed Regulation SBSR, is not requiring the development of internationally recognized standards for reference information that could be used across the financial services industry. Therefore, the Commission believes that the costs of developing and sustaining such a system should not be considered costs of proposed Regulation SBSR. However, proposed Regulation SBSR would require a registered SDR and its participants to use UICs generated by such a system, if such system is able to generate such UICs. Although the Commission believes there would be long-term benefits for using UICs generated by such a system, there could be short-term costs imposed on reporting parties to convert to such a system. In addition, under these internationally recognized standards, users of the reference information could have to pay reasonable fees to support the system. These fees also would represent costs of proposed Rule 901. The Commission requests comment on this issue and any potential costs associated with the potential future use of internationally recognized standards.

b. For Registered SDRs

Proposed Rule 901(f) would require a registered SDR to time stamp, to the second, its receipt of any information submitted to it pursuant to proposed Rules 901(c), (d), or (e). Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS reported by a reporting party. The Commission preliminarily believes that these requirements would not be significant in the context of designing and building the technological framework that would be required of an SDR to become registered.[308] Therefore, the Commission preliminarily estimates that proposed Rules 901(f) and (g) would impose an initial aggregate one-time cost of $342,040, which corresponds to $34,204 per registered SDR.[309] This figure is based on an estimate of ten registered SDRs. With regard to ongoing costs, the Commission preliminarily estimates that proposed Rules 901(f) and (g) would impose an ongoing aggregate annual cost of $436,440, which corresponds to $43,644 per registered SDR.[310] This figure represents an estimate of the support and maintenance costs for the time stamp and transaction ID assignment elements of a registered SDR's systems.

Thus, the Commission preliminarily estimates that the initial aggregate annualized cost associated with proposed Rules 901(f) and (g) would be $778,480, which corresponds to $77,848 per registered SDR.[311] Correspondingly, the Commission preliminarily estimates that the ongoing aggregate annualized cost associated with proposed Rules 901(f) and (g) would be $436,440, which corresponds to $43,644 per registered SDR.[312]

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[302] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (100 hours) at $285 per hour) + (Sr. Systems Analyst (40 hours) at $251 per hour) + (Compliance Manager (20 hours) at $294 per hour) + (Director of Compliance (10 hours) at $426 per hour) + (Compliance Attorney (10 hours) at $291 per hour) × (1,000 reporting parties)] = $51,590,000.

[303] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (16 hours) at $285 per hour) + (Sr. Systems Analyst (16 hours) at $251 per hour) + (Compliance Manager (30 hours) at $294 per hour) + (Compliance Clerk (120 hours) at $59 per hour) + (Director of Compliance (12 hours) at $426 per hour) + (Compliance Attorney (24 hours) at $291 per hour) × (1,000 reporting parties)] = $36,572,000.

[304] This estimate is based on the following: (($51,590 + $36,572) × (1,000 reporting parties)] = $88,162,000, which corresponds to $88,162 per reporting party.

[305] *See supra* note 303.

[306] This estimate is based on the following: (($170,794 + $252,057 + $88,162) × (1,000 reporting parties)) = $511,013,000, which corresponds to $511,013 per reporting party.

[307] This estimate is based on the following: (($74,144 + $205,400 + $36,572) × (1,000 reporting parties)) = $316,116,000, which corresponds to $316,116 per reporting party.

[308] *See* SDR Registration Proposing Release, *supra* note 6.

[309] This figure is based on discussions with various market participants and is calculated as follows: [(Sr. Programmer (80 hours) at $285 per hour) + (Sr. Systems Analyst (20 hours) at $251 per hour) + (Compliance Manager (8 hours) at $294 per hour) + (Director of Compliance (4 hours) at $426 per hour) + (Compliance Attorney (8 hours) at $291 per hour) × (10 registered SDRs)] = $342,040.

[310] This figure is based on discussions with various market participants and is calculated as follows: [(Sr. Programmer (60 hours) at $285 per hour) + (Sr. Systems Analyst (48 hours) at $251 per hour) + (Compliance Manager (24 hours) at $294 per hour) + (Director of Compliance (12 hours) at $426 per hour) + (Compliance Attorney (8 hours) at $291 per hour) × (10 registered SDRs)] = $436,440.

[311] This figure is based on the following: ($34,016 + $42,240) × (10 registered SDRs) = $778,480, which corresponds to $77,848 per registered SDR.

[312] *See supra* note 310.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 901 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

250. How can the Commission more accurately estimate the costs and benefits?

251. What are the costs currently borne by entities covered by proposed Rule 901 with respect to the retention of records of SBS transactions?

252. How many entities would be affected by the proposed rule? How many transactions would be subject to the proposed rule?

253. Are there additional costs involved in complying with the rule that have not been identified? What are the types, and amounts, of the costs?

254. Would the obligations imposed on reporting parties by proposed Rule 901 be a significant enough barrier to entry to cause some firms not to enter the SBS market? If so, how many firms might decline to enter the market? How can the cost of their not entering the market be tabulated? How should the Commission weigh such costs, if any, against the anticipated benefits from increased transparency to the SBS market from the proposal, as discussed above?

255. Can commenters assess the benefits of having comprehensive and accurate reporting of SBS transactions to registered SDRs, which would provide access to such information to the Commission and other regulators? What would have been the benefits to the SBS market if such regulatory oversight had been in place sooner?

256. What benefits and costs would there be to converting to a reference identification system established by or on behalf of an IRSB? What fees might be charged to support such a system? How much would those fees be? Who would have to pay them?

257. Would there be additional benefits from the proposed rule that have not been identified?

C. Public Dissemination of Transaction Reports—Rule 902 of Regulation SBSR

Generally, proposed Rule 902 would require the public dissemination of SBS transaction information. Proposed Rule 902(a) would set out the core requirement that a registered SDR, immediately upon receipt of a SBS transaction report of a SBS, must publicly disseminate information about the SBS, except in the case of a block trade, that must consist of all the information reported by the reporting party pursuant to proposed Rule 901, plus any indicator or indicators contemplated by the registered SDR's policies and procedures that are required by proposed Rule 907.[313]

Proposed Rule 902(b) would require a registered SDR to publicly disseminate a transaction report of a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report would consist of all the information reported by the reporting party pursuant to proposed Rule 901(c), except for the notional size, plus the transaction ID and an indicator that the report represents a block trade. The registered SDR would be required to publicly disseminate a complete transaction report for such block trade (including the transaction ID and the full notional size) at a later time.

1. Benefits

By reducing information asymmetries, post-trade transparency has the potential to lower transaction costs, improve confidence in the market, encourage participation by a larger number of market participants, and increase liquidity in the SBS market. The current market is opaque. Market participants, even dealers, lack an effective mechanism to learn the prices at which other market participants transact. In the absence of post-trade transparency, market participants do not know whether the prices they are paying or would pay are higher or lower than what others are paying for the same SBS instruments. Currently, market participants resort to "screen-scraping" e-mails containing indicative quotation information to develop a sense of the market. Supplementing that effort with prompt last-sale information would provide all market participants with more extensive and more accurate information on which to make trading and valuation determinations.

SBSs are complex derivative instruments, and there exists no single accepted way to model a SBS for pricing purposes. Post-trade pricing and volume information could allow valuation models to be adjusted to reflect how SBS counterparties have valued a SBS instrument at a specific moment in time. Public, real-time dissemination of last-sale information also could aid dealers in deriving better quotations, because they would know the prices at which other market participants have recently traded. This information could aid end users in evaluating current quotations, because they could inquire from dealers why the quotations that the dealers are providing them differ from the prices of recently executed transactions. Furthermore, end users would be afforded the means of testing whether quotations offered by dealers before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency could promote price competition and more efficient price discovery, and ultimately lower transaction costs in the SBS market.

Post-trade transparency of SBSs, as required by proposed Rule 902, could benefit the financial markets generally by improving market participants' ability to value SBSs, particularly if the trade information is used as an input to, rather than as a substitute for, independent valuations and pricing decisions by other market participants. In transparent markets with sufficient liquidity, valuations generally can be derived from recent quotations and/or last-sale prices. However, in opaque markets or markets with low liquidity, recent quotations or last-sale prices may not exist or, if they do exist, may not be widely available. Therefore, market participants holding assets that trade in opaque markets or markets with low liquidity frequently rely instead on pricing models. These models might be based on assumptions subject to the evaluator's discretion, and can be imprecise. Thus, market participants holding the same asset but using different valuation models might arrive at significantly different values for the same asset.

Valuation models could be improved to the extent that they consider last-sale reports of the asset to be valued, reports of related assets, or reports of benchmark products that include the asset to be valued or closely related assets, even if those reports are dated. There is evidence to suggest that post-trade transparency helps reduce the range of valuations of assets that trade in illiquid markets.[314] Thus, post-trade transparency in the SBS market could result in more accurate valuations of SBSs generally—particularly if trade information is used as an input to,

[313] In the circumstances necessitating a registered SDR's systems to be unavailable for publicly disseminating transaction data, the registered SDR would have to disseminate the transaction data immediately upon its re-opening. Proposed Rule 902(c) would prohibit the dissemination of certain information. *See supra* note 100 and accompanying text.

[314] *See* Gjergji Cici, Scott Gibson, John J. Merrick, Jr., "Missing the Marks? Dispersion in Corporate Bond Valuations Across Mutual Funds," draft paper available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1104508.*

rather than a substitute for, independent valuations by other market participants—as it would allow all market participants to know how SBS counterparties priced the SBS at a specific point in time. Especially with complex instruments, investment decisions generally are predicated a significant amount of due diligence to value the instruments properly. A post-trade transparency system permits other market participants to derive at least some informational benefit from obtaining the views of the two counterparties who did a particular trade.

Furthermore, better valuations could create a benefit in the form of more efficient capital allocation, which is premised on accurate knowledge of asset prices. Asset prices that are too high could result in a misallocation of capital, as investors demand more of an asset that cannot deliver an economic risk-adjusted return. By the same token, assets that are inappropriately undervalued could represent investment opportunities that will likely not receive enough capital because investors do not realize that a good risk-adjusted return is available. To the extent that post-trade transparency of SBS transactions enables asset valuations to move closer to their fundamental value, capital could be more efficiently allocated.

Better valuations resulting from post-trade transparency of SBSs also could reduce prudential and systemic risks. Some financial institutions, including many of the most systemically important financial institutions, have large portfolios of SBSs. The financial system could benefit if the portfolios of these institutions were more accurately valued. To the extent that post-trade transparency affirms the valuation of an institution's portfolio, regulators, the individual firm, and the market as a whole could be more certain as to whether the firm would or would not pose prudential or systemic risks. In some cases, however, post-trade transparency in the SBS market might cause an individual firm to revalue its positions and lower the overall value of its portfolio. The sooner that accurate valuations can be made, the more quickly that regulators and the individual firm could take appropriate steps to minimize the firm's prudential risk profile, and the more quickly that regulators and other market participants could take appropriate steps to address any systemic risk concerns raised by that firm.

In addition, proposed Rule 902 is designed to maximize the availability of information regarding SBS transactions to all market participants in a way that the Commission preliminarily believes "take[s] into account whether the public disclosure will materially reduce market liquidity."[315] Post-trade transparency, as contemplated by proposed Rule 902, could reduce information asymmetries among SBS market participants and thereby benefit market liquidity in at least two ways. First, it could reduce the informational asymmetries between market participants, allowing dealers to set quotes using information beyond their own order flow. This could help smaller dealers or other market participants to enter the market by reducing the informational advantage and bargaining power of large dealers. Second, investors with hedging needs who are at an informational disadvantage to dealers and would have more information as to trade prices. Such investors also could more accurately price the trade, which would encourage their participation in the SBS market. Better informed market participation by both dealers and investors—through greater fairness in access to relevant pricing information—could result in benefits in the form of an increase in overall market liquidity.

Finally, real-time public dissemination of SBS transaction reports could have effects on the overall volume of the SBS market, which could have certain benefits. Greater transparency could result in greater confidence in the SBS market, resulting in more market participants being willing to trade, or the same number of market participants being willing to trade more often. These additional transactions could result in better allocation of risk across the financial system. On the other hand, there could be a benefit even if fewer SBS transactions occur because of proposed Regulation SBSR. This could be the case if market participants that are unable or unwilling to properly manage the attendant risks of participation in the SBS market are deterred from participating, or if there were a reduction in the number of SBS transactions where there is a significant information asymmetry between the counterparties. In the latter case, there could be a benefit if uninformed parties are deterred from unwittingly taking on imprudent positions in SBSs.

2. Costs

A potential cost of post-trade transparency that is often cited by market participants, particularly dealers, is that it increases inventory risks. Dealers often enter trades with their customers as a liquidity supplier. A potential consequence of post-trade transparency is that dealers trying to hedge inventory following a trade are put in a weaker bargaining position relative to subsequent counterparties, and will either raise the liquidity fee charged to their clients or refuse to accommodate such trades. Such behavior could lead to lower trading volume and reduce the ability of market participants to manage risk, both of which could have a negative welfare effect on all market participants.

In an opaque market, market participants have to rely primarily on their understanding of the market's fundamentals to arrive at a price at which they would be willing to assume risk. With immediate real-time public dissemination of a block trade, however, market participants who might be willing to offset that risk—*i.e.,* other dealers and natural shorts—could extract rents from a dealer that takes a large risk position from a counterparty. Because the initial dealer would not internalize those higher costs, it would most likely seek to pass those costs on to the counterparty in the form of a higher price for the initial SBS. This could lead to less liquidity in the SBS market, and thus lower trading volume and less ability for market participants to manage risk. It also might be argued that increased post-trade transparency could drive large trades to other markets that offer the opacity desired by traders, creating fragmentation and harming price efficiency and liquidity. This possibility is consistent with the argument that large, informed traders may prefer a less transparent trading environment that allows them to minimize the price impact of their trades. Real-time public dissemination of SBS transaction information, therefore, could cause certain market participants to trade less frequently or to exit the market completely. It would be difficult at this stage to estimate the likelihood of this occurring and, if does occur, what the costs would be. The Commission invites comment on this issue.

Another potential cost of post-trade transparency in the SBS market, as contemplated by proposed Rule 902, is that last-sale prints, particularly in infrequently traded products, could be the result of unusual conditions that do not reflect the economic fundamentals of the SBS instrument. For instance, if a large market participant failed resulting in the liquidation of its portfolio, fire sale prices could have the effect of requiring other market participants to unduly mark down the value of their portfolios. This could cause additional market stress,

[315] 15 U.S.C. 78m(m)(1)(E)(iv).

particularly through the triggering of additional margin calls. In these circumstances, independent evaluations and decision-making that incorporates post-trade information can be important to stabilizing the markets.

Simultaneously with this proposal, the Commission is proposing new Rules 13n–1 through 13n–11 under the Exchange Act relating to the SDR registration process, the duties of SDRs, and their core principles.[316] The SDR Registration Proposing Release covers anticipated collections of information with respect to various aspects of establishing and operating an SDR, including its start-up and ongoing operations, and describes the costs that complying with the proposed rules would entail. The Commission preliminarily believes that a registered SDR would be able to integrate the functions outlined in new Rules 13n–1 through 13n–11 with the capability to publicly disseminate real-time SBS transaction reports required under proposed Rule 902 as part of its overall system development. Accordingly, the Commission believes that the costs associated with enabling and maintaining compliance with proposed Rule 902 would, as a practical matter, represent a portion of the SDR's overall systems development budget and process. For purposes of the PRA, the Commission preliminarily estimated that implementing and complying with the real-time public dissemination requirement of proposed Rule 902 would add an additional 20% to the start-up and ongoing operational expenses that would otherwise be required of a registered SDR.[317]

On this basis, the Commission preliminarily estimates that the initial one-time aggregate costs associated with real-time public dissemination for development and implementation of the systems needed to disseminate the required transaction information and for necessary software and hardware would be $40,004,000 million, which corresponds to $4,000,400 per registered SDR.[318] In addition, the Commission preliminarily estimates that aggregate annual costs for systems and connectivity upgrades associated with real-time public dissemination would be $24,002,400 million, which corresponds to $2,400,240 per registered SDR.[319] Thus, the initial aggregate costs associated with proposed Rule 902 would be $64,006,400, which corresponds to $6,400,640 per registered SDR.[320]

The SDR Registration Proposed Rules also address additional costs on registered SDRs that are not included here.[321]

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 902 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

258. What would be the costs and benefits of post-trade transparency in the SBS market, both in the long and the short term? How would post-trade transparency alter the existing market structure?

259. How would post-trade transparency in the SBS market affect the ability to hedge? Would hedging become more costly or less costly over time? Why?

260. Would post-trade transparency have the same costs and benefits on the SBS market similar as on other securities markets? Why or why not?

261. The SBS market is currently almost wholly institutional. Would this characteristic impact the costs and benefits of post-trade transparency on the SBS market? If so, how and how much? Are the needs of market participants in the SBS market for access to transaction information different than the needs of market participants in other securities markets for access to transaction information?

262. A significant amount of trading in the SBS market is currently carried out by only a limited number of market participants. Would this characteristic impact the costs and benefits of post-trade transparency on the SBS market? If so, how and how much? For example, is there a concern that it would be easier to determine the identity of the counterparties to a SBS transaction in certain instances based on the real-time transaction report? If so, what would be the harm, if any, of such knowledge? Would the answer differ depending upon the liquidity of the SBS instrument, or whether it was a customized SBS or not?

263. The SBS market is generally more illiquid than other securities markets that have post-trade transparency regimes. How would this characteristic impact, if at all, the effect the costs and benefits of post-trade transparency on the SBS market? Do commenters believe that post-trade transparency could materially reduce market liquidity in the SBS market, or particular subsets thereof? Why and how? Please be specific in your response and provide data to the extent possible.

264. How would a post-trade transparency regime in SBSs affect the costs of trading in the underlying securities? For example, how, if at all, would the post-trade transparency regime affect liquidity in the corporate bond market?

265. Academic studies of other securities markets generally have found that post-trade transparency reduces transaction costs and has not reduced market liquidity. How do those markets differ or compare to the SBS market? How would those similarities or differences affect post-trade transparency in the SBS market?

266. Do commenters believe that post-trade transparency could materially reduce market liquidity in the SBS market, or particular subsets thereof? Why and how?

267. Would proposed Rule 902 create any additional costs or benefits not discussed here?

268. Are there any ways that the Commission can study the costs and benefits of the dissemination delay for the size of a block trade by creating different initial requirements by entities

[316] *See* SDR Registration Proposing Release, *supra* note 6.

[317] *See* Section V.D.2 (SDR Duties, Data Collection and Maintenance, Automated Systems, and Direct Electronic Access) of the SDR Registration Proposing Release. This estimate is based on the input from potential SDRs and includes time necessary to design and program a registered SDR's system to calculate and disseminate initial and end of day block trade reports as well as annual costs associated with systems testing and maintenance necessary for the special handling of block trades. These figures do not include the development of policies and procedures necessary to calculate block trade thresholds pursuant to proposed Rule 907(b).

[318] The Commission derived this estimate from the following: [(Attorney (1,400 hours) at $316 per hour) + (Compliance Manager (1,600 hours) at $294 per hour) + (Programmer Analyst (4,000 hours) at $190 per hour) + (Senior Business Analyst (1,400 hours) at $234 per hour) × (10 registered SDRs)) + ($2,000,000 for necessary hardware and software)] = $40,004,000. *See* SDR Registration Proposing Release, *supra* note 6 at Section VI.B.2 (estimating the total cost associated with establishing SDR technology systems).

[319] The Commission derived this estimate from the following: [(Attorney (840 hours) at $316 per hour) + (Compliance Manager (960 hours) at $294 per hour) + (Programmer Analyst (2,400 hours) at $190 per hour) + (Senior Business Analyst (840 hours) at $234 per hour) × (10 registered SDRs)) + ($1,200,000 for necessary hardware and software upgrades)] = $24,002,400. *See* SDR Registration Proposing Release, *supra* note 6, at Section VI.B.2 (estimating the annual ongoing cost associated with operating and maintaining SDR technology systems).

[320] This estimate is based on the following: [(($4,000,400) + ($2,400,240)) × (10 registered SDRs)] = $64,006,400, which corresponds to $6,400,640 per registered SDR.

[321] *See* SDR Registration Proposing Release, *supra* at note 6.

or assets classes as part of the phase-in of the rule?

D. Coded Information—Rule 903 of Regulation SBSR

To facilitate the reporting and dissemination of SBS transactions, as would be required under proposed Rules 901 and 902, the Commission understands that there may—or could be developed—industry conventions for identifying SBSs or reference entities on which SBS are based through readily available reference codes. Proposed Rule 903 addresses this possibility. Specifically, proposed Rule 903 would provide that a reporting party could provide information to a registered SDR pursuant to proposed Rule 901, and a registered SDR could publicly disseminate information pursuant to proposed Rule 902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.

1. Benefits

The use of such codes by a registered SDR and its participants could give rise to significant potential benefits. First, the use of codes could greatly improve the efficiency and accuracy of the trade reporting system by streamlining the provision of data to the registered SDR. Reporting just the code could replace several data elements that otherwise would have to be reported separately. Second, the development of a public coding system could also support greater transparency. Coded transaction reports with key identifying information for SBS transactions could facilitate the aggregation of market transactions, particularly when the records are dispersed across different registered SDRs. Third, the aggregation of SBS transaction data through codes would also facilitate more efficient market analysis studies, surveillance activities, and system risk monitoring by regulators by streamlining the presentation of the SBS transaction data. Without robust, common identifying information, the process of aggregating market data across asset classes and entities could be impaired, increasing the effort required for market analysis activities.

2. Costs

Proposed Rule 903 could impose certain costs on current SBS market participants. Some SBS market participants have developed private coding systems.[322] To the extent that these systems are not widely available, proposed Rule 903 would prohibit their adoption for use by registered SDRs and their participants in connection with the reporting and dissemination of SBS transactions required under proposed Regulation SBSR. Consequently, the owners of these systems may no longer be able to market and generate income (*i.e.,* licensing fees) from these systems, or recover development costs associated with their systems.

The Commission preliminarily believes that proposed Rule 903 would not impose any material costs on registered SDRs or their participants. The development and use of a coding system that is widely available on a non-fee basis would instead likely reduce the costs associated with reporting and disseminating SBS transactions as required under proposed Rules 901 and 902, as market participants would not have to incur any fees to use codes.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 903 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

269. How can the Commission more accurately estimate the costs and benefits?

270. Would proposed Rule 903 entail any benefits or costs not considered by the Commission?

271. Are there costs the Commission has not considered with respect to the use of coding systems that are widely available on a non-fee basis? Would the use of these coding systems in fact reduce the costs associated with the obligations under proposed Rules 901 and 902?

272. Are there coding systems that are widely available on a non-fee basis? What, if any, costs may be associated with requiring the use of a coding system that is widely available on a non-fee basis?

273. What would be the costs and benefits of permitting the use of codes that are available for a fee? Could allowing the use of such codes create a regulatory monopoly in favor of the owner of the code's intellectual property?

E. Operating Hours of Registered SDRs—Rule 904 of Regulation SBSR

Proposed Rule 904 would require a registered SDR to design its systems to allow for continuous receipt and dissemination of SBS data, except that a registered SDR would be permitted to establish "normal closing hours." Such normal closing hours may occur only when, in the estimation of the registered SDR, the U.S. markets and other major markets are inactive. In addition, a registered SDR would be permitted to declare, on an *ad hoc* basis, special closing hours to perform routine system maintenance, subject to certain requirements.

1. Benefits

The Commission preliminarily believes that it would be beneficial to require a registered SDR to continuously receive and disseminate SBS transaction information. The market for SBS is global, and the Commission believes the public interest would be served by requiring continuous real-time dissemination of any SBS transactions (with a sufficient nexus to the United States to require reporting into a registered SDR), no matter when they are executed. Thus, if U.S. participants execute SBSs in Japan while the U.S. markets are closed, market participants around the word would still be able to view real-time reports of such transactions. Further, the Commission believes a continuous dissemination regime would eliminate the temptation for market participants to defer execution of SBS transactions until after regular business hours to avoid real-time post-trade transparency.

Paragraphs (c) to (e) of proposed Rule 904 would specify requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. The Commission believes that these provisions would provide benefits in that they clarify how SBSs executed while a registered SDR is in normal or special closing hours would be reported and disseminated.

2. Costs

The Commission believes that a registered SDR would not incur significant costs in connection with proposed Rule 904. The Commission today is also proposing Rules 13n–1 through 13n–11 under the Exchange Act that would deal with SDR registration, duties, data collection and maintenance, automated systems and other issues.[323] That proposal covers expenses with

[322] The Commission is aware of one such product identification system that involves six-digit reference entity identifiers and three-digit reference obligations identifiers as well as a standard three-digit maturity identifier.

[323] *See* SDR Registration Proposing Release, *supra* note 6.

respect to many aspects of establishing and operating an SDR, including, implicitly, its hours of operation.

The requirement for a registered SDR to provide reasonable advance notice to participants and to the public of its normal and special closing hours, and to provide notice to participants that the SDR is available to accept transaction data after its system was unavailable would likely entail a only a modest annual cost. The Commission preliminarily estimates that the initial and ongoing aggregate annual cost would be $27,360, which corresponds to $2,736 per registered SDR.[324]

There would be additional costs, but these costs are subsumed in the costs associated with proposed Rules 901 and 902. For example, the requirement for reporting parties to report information to the registered SDR upon receiving a notice that the registered SDR has resumed its normal operations would be part of the reporting parties' reporting obligations under proposed Rule 901. The requirement to disseminate transaction reports held in queue should not present any costs in addition to those already contained in proposed Rule 902.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 904 discussed above, as well as any costs and benefits not already described. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

274. How can the Commission more accurately estimate the costs and benefits for handling and disseminating reported SBS transaction data during a registered SDR's normal and special closing hours?

275. Would proposed Rule 904 create any additional costs or benefits not discussed here?

F. Correction of Errors in Security-Based Swap Information—Rule 905 of Regulation SBSR

Proposed Rule 905(a) would establish procedures for correcting errors in reported and disseminated SBS information, recognizing that that any system for transaction reporting must accommodate for the possibility that certain data elements may be incorrectly reported. Proposed Rule 905(b) would set forth the duties of a registered SDR to verify disputed information and make necessary corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a counterparty, proposed Rule 905(b)(1) would require the registered SDR to verify the accuracy of the terms of the SBS and, following such verification, promptly correct the erroneous information contained in its system. Proposed Rule 905(b)(2) would further require that, if the erroneous transaction information contained any data that fall into the categories enumerated in proposed Rule 901(c) as information required to be reported in real time, the registered SDR would be required to publicly disseminate a corrected transaction report of the SBS promptly following verification of the trade by the counterparties to the SBS.

1. Benefits

The Commission preliminarily believes that proposed Rule 905 would enhance the overall reliability of SBS transaction data that would be required to be reported. Requiring participants to promptly correct erroneous transaction information should help ensure the timeliness, accuracy, and completeness of reported transaction information. Providing more accurate SBS transaction data to a registered SDR could benefit participants by helping them ensure that their books are marked accurately and reduce operational risks that arise when counterparties do not have the same understanding of the details of a SBS transaction. Furthermore, requiring corrected SBS transaction information be reported to a registered SDR helps ensure that the Commission and other regulars have an accurate view of the prudential and systemic risks in the SBS market.

2. Costs

The Commission preliminarily believes that promptly submitting an amended transaction report to the appropriate registered SDR after discovery of an error as required under proposed Rule 905(a)(2) would impose costs on reporting parties. Likewise, the Commission preliminarily believes that promptly notifying the relevant reporting party after discovery of an error as required under proposed Rule 905(a)(1) would impose costs on non-reporting-party participants.

With respect to reporting parties, the Commission preliminarily believes that proposed Rule 905(a) would impose an initial, one-time cost associated with designing and building the reporting party's reporting system to be capable of submitting amended SBS transactions to a registered SDR. In addition, reporting parties would face ongoing costs associated with supporting and maintaining the error reporting function.[325]

The Commission preliminarily believes that designing and building appropriate reporting system functionality to comply with proposed Rule 905(a)(2) would be a component of, and represent an incremental "add-on" to, the cost to build a reporting system and develop a compliance function as required under proposed Rule 901.

Based on discussions with industry participants, the Commission preliminarily estimates this incremental burden to be equal to 5% of the one-time and annual costs associated with designing and building a reporting system that is in compliance with proposed Rule 901,[326] plus 10% of the corresponding one-time and annual costs associated with developing the reporting party's overall compliance program required under proposed Rule 901.[327] Thus, for reporting parties, the Commission preliminarily estimates that proposed Rule 905(a) would impose an initial (first-year) aggregate cost of $11,419,000, which is $11,419 per reporting party,[328] and an ongoing aggregate annualized burden of $3,927,000, which is $3,927 per reporting party.[329]

With regard to non-reporting-party participants, the Commission preliminarily believes that proposed Rule 905(a) would impose an initial and ongoing cost associated with promptly notifying the relevant reporting party after discovery of an error as required under proposed Rule 905(a)(1). The Commission preliminarily estimates that such annual cost would be $172,280,000, which corresponds to $43,070 per non-reporting-party

[324] The Commission derived this number as follows: [(Operations Specialist (24 hours) at $114 per hour) × (10 potential registered SDRs)] = $27,360, which corresponds to $2,736 per registered SDR.

[325] The Commission preliminarily believes that the actual submission of amended transaction reports required under proposed Rule 905(a)(2) would not result in material, independent costs because this would be done electronically though the reporting system that the reporting party must develop and maintain to comply with proposed Rule 901. The costs associated with such a reporting system are addressed in the Commission's analysis of proposed Rule 901. *See supra* Section XIV.B.2 and notes 298–301.

[326] *See supra* notes 298 and 299.

[327] *See supra* notes 302 and 303.

[328] This figure is calculated as follows: [(((($46,657 one-time development of reporting system) × (0.05)) + (($5,400 annual maintenance of reporting system) × (0.05)) + (($51,590 one-time compliance program development) × (0.1)) + (($36,572 annual support of compliance program) × (0.1))) × (1,000 reporting parties)] = $11,419,000, which is $11,419 per reporting party.

[329] This figure is calculated as follows: [(((($5,400 annual maintenance of reporting system) × (0.05)) + (($36,572 annual support of compliance program) × (0.1))) × (1,000 reporting parties)] = $3,927,000, which is $3,927 per reporting party.

participant.[330] This figure is based on the Commission's preliminary estimates of (1) 4,000 non-reporting-party participants; (2) 11 transactions per day per non-reporting-party participant;[331] and (3) an error rate of one-third (33%),[332] or approximately 4 transactions per day per non-reporting-party participant.

For registered SDRs, the ability to verify disputed information, process a transaction report cancellation, accept a new SBS transaction report, and update relevant records are all capabilities that the registered SDR would have to implement to comply with its obligations under proposed Regulation SDR.[333] Likewise, a registered SDR would be required to have the capacity to re-disseminate SBS transaction reports pursuant to proposed Rule 902. The Commission preliminarily believes that the costs associated with establishing these capabilities, including systems development, support, and maintenance, are largely addressed in the Commission's analysis of those rules.[334] The Commission preliminarily estimates that to develop and publicly provide the necessary protocols for carrying out these functions would impose on each registered SDR a cost of $186,790.[335] The Commission estimates that to review and update such protocols would impose an annualized cost on each registered SDR of $373,580.[336]

Accordingly, the Commission preliminarily estimates that the initial aggregate annualized cost on registered SDRs under proposed Rule 905 would be $5,603,700, which corresponds to $560,370 for each registered SDR.[337] The Commission further preliminarily estimates that the ongoing aggregate annualized cost on registered SDRs under proposed Rule 905 would be $3,735,800, which corresponds to $373,580 for each registered SDR.[338]

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 905 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

276. How can the Commission more accurately estimate the costs and benefits related to correcting errors in reported and disseminated SBS information?

277. Would proposed Rule 905 create any additional costs or benefits not discussed here?

G. Other Duties of Participants—Rule 906 of Regulation SBSR

Proposed Rule 906(a) would set forth a procedure designed to ensure that a registered SDR obtains relevant ID information for both counterparties to a SBS, not just the IDs of the reporting party. Proposed Rule 906(a) would require a registered SDR to identify any SBS reported to it for which it does not have participant ID and (if applicable) broker ID, desk ID, and trader ID of each counterparty. For such transactions, the registered SDR would be required to send a report, once a day, to each participant seeking the missing information. Under proposed Rule 906(a), a participant that receives such a report would be required to provide the missing ID information to the registered SDR within 24 hours.

Proposed Rule 906(b) would require participants to provide a registered SDR with information identifying the participant's affiliate(s) that may also be participants of the registered SDR, as well as its ultimate parent(s). Additionally, under proposed Rule 906(b) participants would be required to promptly notify the registered SDR of any changes to the information previously provided.

Proposed Rule 906(c) would require a participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any SBS transaction reporting obligations in a manner consistent with proposed Regulation SBSR and the registered SDR's applicable policies and procedures. In addition, proposed Rule 906(c) would require each such participant to review and update its policies and procedures at least annually.

1. Benefits

The Commission preliminarily believes that proposed Rule 906(a) would enable each registered SDR to obtain more complete records, consistent with the goals of the Dodd-Frank Act. Also, proposed Rule 906(a) would provide regulators with a more comprehensive picture of SBS transactions, thus enabling more robust surveillance and supervision of the SBS markets. More complete SBS records would provide the Commission necessary information to investigate specific transactions and respond effectively when issues arise in the SBS markets.

Proposed Rule 906(b) is designed to enhance the Commission's ability to monitor and surveil the SBS markets. Obtaining this ultimate parent(s) and affiliate(s) information would be helpful for understanding the risk profile of not only individual counterparties, but for large financial groups. The Commission further preliminarily believes that it is important that the participants promptly notify the registered SDR of any changes to the information regarding ultimate parent(s) and affiliate(s), as this would impact the value of the data that the registered SDR would be retaining for regulatory purposes.

Furthermore, proposed Rule 906(b) could result in significant benefits by encouraging the creation and widespread use of generally accepted standards for reference information. The Commission understands that some efforts have been undertaken—in both

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[330] This figure is based on the following: [(4 error notifications per non-reporting-party participant per day) × (365 days/year) × (Compliance Clerk (0.5 hours/report) at $59 per hour) × (4,000 non-reporting-party participants)] = $172,280,000, which corresponds to $43,070 per non-reporting-party participant. The Commission preliminarily believes that participants already monitor their SBS transactions and positions in the ordinary course of business. Thus, the Commission preliminary believes that, as a practical matter, proposed Rule 905 would not result in any significant new burdens for these participants.

[331] This figure is based on the following: [((15,458,824 estimated annual SBS transactions)/(4,000 estimated non-reporting-party participants))/(365 days/year)] = 10.58, or approximately 11 transactions per day. *See supra* note 185. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[332] In other words, the Commission is estimating that one-third of all SBS transactions will require an amended report to be submitted to the registered SDR pursuant to proposed Rule 905(a). For purposes of its PRA analysis, the Commission is further assuming that both the non-reporting-party participant and the reporting party discover all errors. The Commission recognizes that, as a practical matter, there may be instances where one party fails to detect an error.

[333] *See* SDR Registration Proposing Release, *supra* note 6.

[334] *See id.*

[335] This figure is based on the following: [(Sr. Programmer (80 hours) at $285 per hour) + (Compliance Manager (160 hours) at $294 per hour) + (Compliance Attorney (250 hours) at $291 per hour) + (Compliance Clerk (120 hours) at $59 per hour) + (Sr. Systems Analyst (80 hours) at $251 per hour) + (Director of Compliance (40 hours) at $426 per hour) = $186,790.

[336] This figure is based on the following: [(Sr. Programmer (160 hours) at $285 per hour) + (Compliance Manager (320 hours) at $294 per hour) + (Compliance Attorney (500 hours) at $291 per hour) + (Compliance Clerk (240 hours) at $59 per hour) + (Sr. Systems Analyst (160 hours) at $251 per hour) + (Director of Compliance (80 hours) at $426 per hour)] = $373,580.

[337] This figure is based on the following: [($186,790 to develop protocols) + ($373,580 for annual support)) × (10 registered SDRs)] = $5,603,700, which corresponds to $560,370 per registered SDR.

[338] This figure is based on the following: [($373,580 for annual support per registered SDR) × (10 registered SDRs)] = $3,735,800, which corresponds to $373,580 per registered SDR.

the private and public sectors, both domestically and internationally—to establish a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally. Such a system would be of significant benefit to regulators worldwide, as each market participant could readily be identified using a single reference code regardless of the jurisdiction or product market in which the market participant was engaging. Such a system also could be of significant benefit to the private sector, as market participants would have a common identification system for all counterparties and reference entities, and would no longer have to use multiple proprietary nomenclature systems. The enactment of the Dodd-Frank Act and the establishment of a comprehensive system for reporting and dissemination of SBSs—and for reporting and dissemination of swaps, under jurisdiction of the CFTC—offer a unique opportunity to facilitate the establishment of a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally.

The Commission preliminarily believes that proposed Rule 906(c) could provide benefits to SBS market participants and the market as a whole. Proposed Rule 906(c) would enhance the overall reliability SBS transaction data that is required to be reported to a registered SDR pursuant to proposed Rule 901. Requiring SBS dealers and major SBS participants to adopt and maintain written policies and procedures addressing compliance with proposed Regulations SBSR should result in more reliable reporting of SBS transaction data. More reliable reporting would benefit counterparties to SBS transactions, and the market more generally, by increasing the usefulness of the disseminated data, and would benefit regulators using and analyzing the reported data. In addition, requiring participants that are SBS dealers or major SBS participants—the entities that engage in the most SBS transactions—to implement policies and procedures could reduce the incidence of outages, reporting system malfunctions, or interruptions by addressing how they may be prevented and, in the event one occurs, how it could be resolved with the least negative impact.

The Commission preliminarily believes that requiring each participant that is a SBS dealer or major SBS participant to adopt and maintain written policies and procedures related to the reporting of SBS transactions may have additional benefits. Proposed Rule 906(c) should foster compliance efforts more generally among participants. With written policies and procedures, a participant's compliance with its reporting obligations would not be overly dependent on any specific individual. Higher quality reporting of SBS transaction data should generate greater confidence among SBS market participants and benefit the market as a whole. Over time, participants and the Commission also would be able to compare different approaches and develop best practices for the reporting of SBS transactions. Best practices would be valuable to the participants, the Commission, and market as a whole by supporting more complete and accurate SBS transaction reporting. Comparing the written policies and procedures adopted and maintained by covered participants would also support Commission supervision and oversight of SBS transaction reporting. For example, the failure of a SBS dealer or major SBS participant to adopt and maintain appropriate policies and procedures as required under proposed Rule 906(c) could serve as an important indicator of other compliance issues. Proposed Rule 906(c) could thus provide the Commission a means to address such concerns proactively.

2. Costs

Proposed Rule 906(a) would require a registered SDR, once a day, to send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks participant ID and (if applicable) broker ID, desk ID, and trader ID. The Commission preliminarily estimates that each registered SDR would face a one-time, initial cost of $30,832 to create a report template and develop the necessary systems and processes to produce a daily report required by proposed Rule 906(a).[339] The Commission further preliminarily believes that there would be an ongoing annual cost for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports, of approximately $29,244.[340]

Accordingly, the Commission preliminarily estimates that the initial aggregate annualized cost for registered SDRs associated with proposed Rule 906(a) would be approximately $600,760, which corresponds to $60,076 per registered SDR.[341] The Commission preliminarily estimates that the ongoing aggregate annualized cost for registered SDRs associated with proposed Rule 906(a) would be approximately $292,440, which corresponds to $29,244 per for registered SDR.[342]

Proposed Rule 906(a) would require a participant that receives a daily report from a registered SDR to provide the missing UICs to the registered SDR within 24 hours. Proposed Rule 906(a) would impose initial and ongoing costs on participants to complete and return the reports received from a registered SDR. The Commission preliminarily estimates that proposed Rule 906(a) would not result in any initial or ongoing costs for participants that are reporting parties. This estimate is based on the Commission's preliminary belief that a reporting party would structure its reporting program to be in compliance with proposed Regulation SBSR, and consequently, would send complete information as relates to itself for each SBS transaction submitted to a registered SDR. The Commission further preliminarily estimates that proposed Rule 906(a) would result in an initial and ongoing aggregate annualized cost for participants of approximately $75,372,500, which corresponds to a cost of approximately $15,100 per participant.[343] This figure is based on the Commission's preliminary estimates of (1) 5,000 participants; (2) 9 transactions per day per participant; [344] and (3) a missing information rate of

[339] The Commission derived its estimate from the following: [(Senior Systems Analyst (40 hours) at $251 per hour) + (Sr. Programmer (40 hours) at $285 per hour) + (Compliance Manager (16 hours) at $294 per hour) + (Director of Compliance (8 hours) at $426 per hour) + (Compliance Attorney (8 hours) at $291)] = $30,832.

[340] The Commission derived its estimate from the following: [(Senior Systems Analyst (24 hours) at $251 per hour) + (Sr. Programmer (24 hours) at $285 per hour) + (Compliance Clerk (260 hours) at $59 per hour)] = $29,244.

[341] The Commission derived its estimate from the following: [($30,832 + $29,244) × (10 registered SDRs)] = $600,760, which corresponds to $60,076 per registered SDR.

[342] The Commission derived its estimate from the following: [($29,244) × (10 registered SDRs)] = $292,440, which corresponds to $29,244 per registered SDR.

[343] This figure is based on the following: [(7 missing information reports per participant per day) × (365 days/year) × (Compliance Clerk (0.1 hours) at $59 per hour) × (5,000 participants)] = $75,372,500, which corresponds to $15,074.50 per participant.

[344] This figure is based on the following: [((15,458,824 estimated annual SBS transactions)/(5,000 estimated participants))/(365 days/year)] = 8.47, or approximately 9 transactions per day. *See supra* note 290. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

80%,[345] or approximately 7 transactions per day per participant.

Proposed Rule 906(b) would require every participant to provide a registered SDR an initial parent/affiliate report, using ultimate parent IDs and participant IDs, and updating that information, as necessary. The Commission preliminarily estimates that the cost for each participant to submit an initial or update report would be $29.50.[346] The Commission preliminarily estimates that each participant would submit two reports each year.[347] In addition, the Commission preliminarily estimates that there may be 5,000 SBS participants and that each one may connect to two registered SDRs. Accordingly, the Commission preliminarily estimates that the initial and ongoing aggregate annualized cost associated with proposed Rule 906(b) would be $590,000, which corresponds to $118 per participant.[348]

The Commission, in proposed Regulation SBSR, is not requiring the development of internationally recognized standards for reference information (such participant IDs or ultimate parent IDs) that could be used across the financial service industry. Therefore, the Commission believes that the costs of developing and sustaining such a system should not be considered costs of proposed Regulation SBSR. However, proposed Regulation SBSR would require a registered SDR and its participants to use UICs generated by such a system, if such system were able to generate such UICs. Although the Commission believes there would be long-term benefits for using UICs generated by such a system, there could be short-term costs imposed on reporting parties to convert to such a system. In addition, under these internationally recognized standards, users of the reference information could have to pay reasonable fees to support the system. These fees also would represent costs of proposed Rule 901. The Commission requests comment on this issue and any potential costs associated with the potential future use of internationally recognized standards.

Proposed Rule 906(c) would require each participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any SBS transaction reporting obligations in a manner consistent with proposed Regulation SBSR and the registered SDR's applicable policies and procedures. Proposed Rule 906(c) would also require the review and updating of such policies and procedures at least annually. The Commission preliminarily estimates that developing and implementing written policies and procedures as required under the proposed rule could result in a one-time initial cost to each covered participant of approximately $52,440.[349] Drawing on the Commission's experience with other rules that require entities to establish and maintain policies and procedures,[350] this figure includes the estimated cost to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission preliminarily estimates that the annualized cost to maintain such policies and procedures, including a full review at least annually, as required under the proposed rule, would be approximately $29,736 for each covered participant.[351] This figure is based on an estimate of the cost to review existing policies and procedures, make any necessary updates, conduct ongoing training, maintain relevant systems and internal controls systems, and perform necessary testing.

Accordingly, the Commission preliminarily estimates that the initial aggregate annualized cost associated with proposed Rule 906(c) would be approximately $82,176,000, which corresponds to $82,176 per covered participant.[352] The Commission preliminarily estimates that the ongoing aggregate annualized cost associated with proposed Rule 906(c) would be approximately $29,736,000, which corresponds to $29,736 per covered participant.[353]

In total, the Commission preliminarily believes that proposed Rule 906 would result in an initial, aggregate annualized cost of $159,094,260,[354] and an ongoing, aggregate annualized cost of $106,350,860 for all covered entities.[355]

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 906 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

278. How can the Commission more accurately estimate the costs and benefits?

279. Would proposed Rule 906 create any additional costs or benefits not discussed here?

280. What would be the costs and benefits of having reference identifiers established under the auspices of an IRSB—for participants? For registered SDRs? What fees might be charged to support such a system? How much would those fees be? Who would have to pay them?

281. What would be the costs to verify ultimate parent and affiliate information under the auspices of an IRSB and maintain it over time? What would be the benefits of having such information verified and maintained?

282. To what extent do participants already have policies and procedures in place for reporting information to an SDR? To what extent would proposed Rule 906(c) impose costs on covered

[345] In other words, the Commission is estimating that 80% of the time the reporting party would not know and thus would not be able to report the necessary UICs of its counterparty. Therefore, a registered SDR would have to obtain the missing UICs through the process described in proposed Rule 906(a).

[346] This figure is based on the following: [(Compliance Clerk (0.5 hours) at $59 per hour) × (1 report)] = $29.50.

[347] During the first year, the Commission preliminarily believes each participant would submit its initial report and one update report. In subsequent years, the Commission preliminarily estimates that each participant would submit two update reports.

[348] This figure is based on the following: [($29.50/report) × (2 reports/year/SDR connection) × (2 SDR connections/participant) × (5,000 participants)] = $590,000, which corresponds to $118 per participant.

[349] The Commission derived its estimate from the following: [(Sr. Programmer (40 hours) at $285 per hour) + (Compliance Manager (40 hours) at $294 per hour) + (Compliance Attorney (40 hours) at $291 per hour) + (Compliance Clerk (40 hours) at $59 per hour) + (Sr. Systems Analyst (32 hours) at $251 per hour) + (Director of Compliance (24 hours) at $426 per hour)] = $52,440 per covered participant.

[350] *See supra* note 256.

[351] The Commission derived its estimate from the following: [(Sr. Programmer (8 hours) at $285 per hour) + (Compliance Manager (24 hours) at $294 per hour) + (Compliance Attorney (24 hours) at $291 per hour) + (Compliance Clerk (24 hours) at $59 per hour) + (Sr. Systems Analyst (16 hours) at $251 per hour) + (Director of Compliance (24 hours) at $426 per hour)] = $29,736 per participant.

[352] The Commission derived its estimate from the following: [($52,440 + $29,736) × (1,000 covered participants)] = $82,176,000.

[353] The Commission derived its estimate from the following: [($29,736) × (1,000 covered participants)] = $29,736,000.

[354] This figure is based on the following: [($600,760 for registered SDRs under proposed Rule 906(a)) + ($75,372,500 for non-reporting-party participants under proposed Rule 906(a)) + ($945,000 for participants under proposed Rule 906(b)) + ($82,176,000 for covered participants under proposed Rule 906(c))] = $159,094,260.

[355] This figure is based on the following: [($297,360 for registered SDRs under proposed Rule 906(a)) + ($75,372,500 for non-reporting-party participants under proposed Rule 906(a)) + ($945,000 for participants under proposed Rule 906(b)) + ($29,736,000 for covered participants under proposed Rule 906(c))] = $106,350,860.

participants that they have not already incurred?

H. Policies and Procedures of Registered SDRs—Rule 907 of Regulation SBSR

Proposed Rule 907 would require a registered SDR to establish and maintain compliance with written policies and procedures: (1) That enumerate the specific data elements of an SBS or a life cycle event that a reporting party would report; (2) that specify data formats, connectivity requirements, and other protocols for submitting information; (3) for specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by proposed Rule 905(b)(2), which would denote that the report relates to a previously disseminated transaction; (4) describing how reporting parties shall report and, consistent with the enhancement of price discovery, how the registered SDR shall publicly disseminate, reports of, and adjustments due to, life cycle events; SBS transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market; (5) for assigning transaction IDs and UICs related to its participants; and (6) for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using applicable UICs.

In addition, proposed Rule 907(b) would require a registered SDR to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SBS instruments reported to the registered SDR in accordance with the criteria and formula for determining block size as specified by the Commission.

Under proposed Rules 907(c) and (d), a registered SDR would be required to make its policies and procedures publicly available on its Web site, and review, and update as necessary, its policies and procedures at least annually, indicating the date on which they were last reviewed. Finally, proposed Rule 907(e) would require a registered SDR to have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to proposed Regulation SBSR and the registered SDR's policies and procedures thereunder.

1. Benefits

In proposed Regulation SBSR, the Commission is establishing a number of broad policy goals for implementing Title VII of the Dodd-Frank Act. Proposed Rule 907 would permit a registered SDR some flexibility regarding how to meet those goals. In many cases, there could be many ways that that these goals could be carried out effectively, and it may not be necessary or appropriate in all cases to establish one particular way by rule. By requiring a registered SDR, in proposed Rule 907, to develop policies and procedures for completing many of the details of an SBS transaction reporting and dissemination system, the Commission seeks to harness the knowledge and experience of registered SDRs and harness market incentives to develop the policies and procedures that are most effective in meeting the policy goals in an efficient manner. The Commission expects that, over time, registered SDRs, participants, and the Commission could identify best practices for the reporting and dissemination of SBS transactions.

Proposed Rules 907(a)(1) and (2) would require a registered SDR to develop and maintain policies and procedures to specify the data elements of a SBS or a life cycle event that a reporting party must report, as well as the data formats, connectivity requirements, and other protocols for submitting information. The Commission preliminarily believes that assigning this responsibility to a registered SDR would provide a level of flexibility and transparency that is necessary in this developing market. Furthermore, this approach would allow registered SDRs (perhaps, but not necessarily, after consultation with their participants) to quickly identify and address potential weaknesses in the SBS transaction reporting process as set out under proposed Regulation SBSR.

Proposed Rule 907(a)(3) would require a registered SDR to establish and maintain compliance with policies and procedures for specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by proposed Rule 905(b)(2), which would denote that the report relates to a previously disseminated transaction. The Commission preliminarily believes that a registered SDR is in the best position to determine how these corrections are submitted, and believes that a consistent regime for the submission of correction by participants would benefit all market participants.

Proposed Rule 907(a)(4) would require a registered SDR to develop and maintain policies and procedures that describe how reporting parties would report and, consistent with the enhancement of price discovery, how the registered SDR would publicly disseminate reports of, and adjustments to, life cycle events; SBS transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market. The Commission believes that the entire SBS market could benefit if a registered SDR, using its knowledge of the market, would develop consistent and transparent standards when certain SBS might have characteristics that reduce or eliminate entirely their price discovery value. For example, while an inter-affiliate SBS transaction would be required to be reported (so that the registered SDR obtains information about the legal owner), it could be disseminated with indication that the transaction was not at arm's length.

Proposed Rule 907(a)(5) would require a registered SDR to establish and maintain compliance with policies and procedures for assigning a transaction ID to each SBS that is reported to it, and for assigning UICs, including participant IDs, ultimate parent IDs, desk IDs, broker IDs, and trader IDs. As noted above, all such UICs would have to be assigned by or on behalf of an IRSB (or, if no standards-setting body meet the required criteria or the IRSB has not assigned a UIC to a particular person or unit thereof, by the registered SDR). Proposed Rule 906 could result in significant benefits by encouraging the creation and widespread use of internationally recognized standards for reference information. The Commission preliminarily believes that reporting of information using UICs would promote effective oversight, enforcement, and surveillance of the SBS market by the Commission and other regulators. For example, activity could be tracked by a particular participant, a particular desk, or a particular trader. Regulators could observe patterns and connections in trading activity, or examine whether a trader had engaged in questionable trading activity across different SBS instruments. UICs also could facilitate aggregation and monitoring of the positions of SBS counterparties, which

could be of significant benefit for prudential and systemic risk management.

The Commission understands that some efforts have been undertaken—in both the private and public sectors, both domestically and internationally—to establish a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally. Such a system would be of significant benefit to regulators worldwide, as each market participant could readily be identified using a single reference code regardless of the jurisdiction or product market in which the market participant was engaging. Such a system also could be of significant benefit to the private sector, as market participants would have a common identification system for all counterparties and reference entities, and would no longer have to use multiple identification systems. The enactment of the Dodd-Frank Act and the establishment of a comprehensive system for reporting and dissemination of SBSs—and for reporting and dissemination of swaps, under the jurisdiction of the CFTC—offer a unique opportunity to facilitate the establishment of a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally.

Furthermore, requiring a registered SDR to establish and maintain compliance with written policies and procedures could result in more accurate reporting by reporting parties, and thus more reliable dissemination of SBS transaction data. Higher quality reporting and dissemination of SBS transaction data should generate greater confidence among registered SDRs, market participants, and regulators, thus strengthening the SBS market the market as a whole.

The Commission preliminarily believes that requiring a registered SDR to calculate and publish block trade thresholds pursuant to proposed Rule 907(b) should help market participants, the Commission, and other regulators monitor block trade thresholds and track changes in the market for particular SBS instruments over time. The Commission preliminarily believes that a registered SDR is best placed to deliver these benefits, because an SDR has access to the necessary data and the ability to calculate and publicize the block trade thresholds efficiently.

The Commission preliminarily believes that requiring a registered SDR to make publicly available on its Web site the policies and procedures required by proposed Regulation SBSR, pursuant to proposed Rule 907(c), would promote greater understanding of and compliance with such policies and procedures. Periodic review of the policies and procedures would also ensure that they are up-to-date.

Finally, proposed Rule 907(e) would require a registered SDR to have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to proposed Regulation SBSR and the registered SDR's policies and procedures thereunder. There could be benefits in obtaining information from each registered SDR related to the timeliness, accuracy, and completeness of data reported to the registered SDR. Required data submissions that are untimely, inaccurate, or incomplete could compromise the regulatory data that the Commission would utilize to carry out its oversight responsibilities. Furthermore, required data submissions that are untimely, inaccurate, or incomplete could diminish the value of publicly disseminated reports that promote transparency and price discovery. Information or reports provided to the Commission by a registered SDR related to the timeliness, accuracy, and completeness of data could assist the Commission in examining for compliance with proposed Regulation SBS and in bringing enforcement or other administrative actions as necessary and appropriate.

2. Costs

The Commission preliminarily estimates that ten registered SDRs would be subject to proposed Rule 907, and that developing and implementing written policies and procedures as required under proposed Rule 907 could result in an initial, one-time cost to each registered SDR of approximately $3,831,000.[356] This figure includes the estimated cost to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, perform necessary testing, monitor participants, and compile data.[357] In addition, the Commission preliminarily estimates that the annualized cost to maintain such policies and procedures, including a full review at least annually; making its policies and procedures publicly available on its Web site; and developing the capacity to provide the Commission information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to proposed Regulation SBSR and the registered SDR's policies and procedures would be approximately $7,662,000 for each registered SDR.[358] This figure is based on an estimate of the cost to review existing policies and procedures, make necessary updates, conduct ongoing training, maintain relevant systems and internal controls systems, calculate and publish block trade thresholds, perform necessary testing, monitor participants, and collect data. Accordingly, the Commission preliminarily estimates that the initial annualized cost associated with proposed Rule 907 would be approximately $11,492,500 per registered SDR, which corresponds to an initial annualized aggregate cost of approximately $114,924,500.[359] The Commission preliminarily estimates that the ongoing annualized cost associated with proposed Rule 907 would be approximately $7,662,000 per registered SDR, which corresponds to an ongoing annualized aggregate cost of approximately $76,617,000.[360] These figures are based, in part, on the

[356] The Commission derived its estimate from the following: [(Sr. Programmer (1,667 hours) at $285 per hour) + (Compliance Manager (3,333 hours) at $294 per hour) + (Compliance Attorney (5,000 hours) at $291 per hour) + (Compliance Clerk (2500 hours) at $59 per hour) + (Sr. Systems Analyst (1,667 hours) at $251 per hour) + (Director of Compliance (833 hours) at $426 per hour)] = $3,830,722 per SDR. The Commission preliminarily believes that potential SDRs that have similar policies and procedures in place may find that these costs would be lower, while potential SDRs that do not have similar policies and procedures in place may find that the potential costs would be higher.

[357] This figure includes time necessary to design and program systems and implement policies and procedures to calculate and publish block trade thresholds for all SBS instruments reported to the registered SDR as required by proposed Rule 907(b). It also includes time necessary to design and program systems and implement policies and procedures to determine which reported trades would not be considered block trades pursuant to proposed Rule 907(b). This figure also includes time necessary to design and program systems and implement policies and procedures to assign certain IDs, as required by proposed Rule 907(a)(5).

[358] The Commission derived its estimate from the following: [Sr. Programmer (3,333 hours) at $285 per hour) + (Compliance Manager (6,667 hours) at $294 per hour) + (Compliance Attorney (10,000 hours) at $291 per hour) + (Compliance Clerk (5,000 hours) at $59 per hour) + (Sr. Systems Analyst (3,333 hours) at $251 per hour) + (Director of Compliance (1,667 hours) at $426 per hour)] = $7,661,728 per registered SDR. The Commission preliminarily believes that potential SDRs that have similar policies and procedures in place may find that these costs would be lower, while potential SDRs that do not have similar policies and procedures in place may find that the potential costs would be higher.

[359] The Commission derived its estimate from the following: [((3,830,722) + ($7,661,728)) × (10 registered SDRs)] = $114,924,500.

[360] The Commission derived its estimate from the following: [($7,661,728) × (10 registered SDRs)] = $76,617,280.

Commission's experience with other rules that require entities to establish and maintain compliance with policies and procedures.[361]

In addition, proposed Rule 907(a)(5) could impose certain costs on registered SDRs in connection with the use of internationally recognized standards for reference information. The Commission, in proposed Regulation SBSR, is not requiring the development of such standards that could be used across the financial service industry. Therefore, the Commission believes that the costs of developing and sustaining such a system should not be considered costs of proposed Regulation SBSR. However, proposed Regulation SBSR would require a registered SDR to use UICs generated by such a system, if such system is able to generate such UICs. Although the Commission believes there would be long-term benefits for using UICs generated by such a system, there could be short-term costs imposed on registered SDRs to convert to such a system. In addition, under these internationally recognized standards, users of the reference information could have to pay reasonable fees to support the system. These fees also would represent costs of proposed Rule 901. The Commission requests comment on this issue and any potential costs associated with the potential future use of internationally recognized standards.

There could be a potential cost of proposed Rule 907 in that registered SDRs would retain flexibility to shape the details of a SBS trade reporting and dissemination system. It could be that such flexibility could result in varying approaches by each registered SDR and, thus, complicate the reporting of SBS transactions, impede the use of SBS transaction information that is publicly disseminated, or make market oversight more difficult. These potential costs could be avoided were the Commission to implement more of the details through rulemaking. The Commission requests comment on the costs, if any, associated with providing a registered SDR a certain amount of flexibility, and how those costs should be balance with the potential benefits as discussed above of providing the registered SDRS with flexibility.

Finally, with respect to proposed Rule 907(e), the Commission preliminarily believes that, as part of its core functions, a registered SDR would have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to proposed Regulation SBSR and the registered SDR's policies and procedures. Proposed Rule 13n–5(b) would require a registered SDR to establish, maintain, and enforce written policies and procedures to satisfy itself by reasonable means that the transaction data that has been submitted to the security-based swap data repository is accurate, and also to ensure that the transaction data and positions that it maintains are accurate.[362] The Commission preliminarily believes that these capabilities would enable a registered SDR to provide the Commission information or reports as may be requested pursuant to proposed Rule 907(e). Thus, the Commission does not believe that proposed Rule 907(e) would impose any additional costs on a registered SDR.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 907 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

283. How can the Commission more accurately estimate the costs and benefits?

284. Would proposed Rule 907 create any additional costs or benefits not discussed here?

285. Is it a potential cost that the policies and procedures sufficiently detailed such that participants would be able to know what is required of them?

286. What are the costs and benefits of allowing a registered SDR some flexibility to determine whether certain SBSs may not have price discovery value and to use certain indicators to that effect in the publicly disseminated transaction reports?

287. What costs would be imposed on a registered SDR to use UICs that had been established by or on behalf of an IRSB? Would the registered SDR have to pay fees to support the system? To whom? How much would the fees be? What would be the costs of transitioning to such a system? How would these overall costs compare to the costs that would be incurred by a registered SDR to assign UICs using its own methodology?

288. What are the costs of allowing registered SDRs flexibility to shape many of the details of a SBS trade reporting and dissemination system? What are the benefits?

I. Jurisdictional Matters—Rule 908 of Regulation SBSR

1. Benefits

The Commission believes that, in proposing Rule 908, the Commission has no discretion about which entities or SBSs are subject to the Exchange Act, as amended by the Dodd-Frank Act. A federal agency does not have the power to expand or circumscribe the reach of U.S. law. Therefore, because the Commission has no discretion in the matter, there are no benefits to proposed Rule 908 other than those inherent in the Exchange Act, as amended by the Dodd-Frank Act.

2. Costs

Similarly, because the Commission has no discretion in the matter, there are no costs to proposed Rule 908 other than those inherent in the Exchange Act, as amended by the Dodd-Frank Act.

J. Registration of Security-Based Swap Data Repository as Securities Information Processor—Rule 909 of Regulation SBSR

Proposed Rule 909 would require each registered SDR also to register with the Commission as a SIP on existing Form SIP.

1. Benefits

The Commission preliminarily believes that SIP registration of a registered SDR would help ensure fair access to important SBS transaction data reported to and publicly disseminated by the registered SDR. Requiring a registered SDR to register with the Commission as a SIP would subject it to Section 11A(b)(5) of the Exchange Act,[363] which provides that a registered SIP must notify the Commission whenever it prohibits or limits any person's access to its services. Upon its own motion or upon application by any aggrieved person, the Commission could review the SIP's action.[364] If the Commission finds that the person has been discriminated against unfairly, it could require the SIP to provide access to that person.[365] Section 11A(b)(6) of the Exchange Act [366] also provides the Commission authority to take certain regulatory action as may be necessary or appropriate against a registered SIP.[367]

[361] *See supra* note 256.

[362] *See* SDR Registration Proposing Release, *supra* note 6, proposed Rules 13n–5(b)(1)(iii) and 13n–5(b)(3) under the Exchange Act.

[363] 15 U.S.C. 78k–1(b)(5).

[364] *See* 15 U.S.C. 78k–1(b)(5)(A).

[365] *See* 15 U.S.C. 78k–1(b)(5)(B).

[366] 15 U.S.C. 78k–1(b)(6).

[367] Section 11A(b)(6) of the Exchange Act provides that the Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered SIP or suspend for a period not exceeding 12 months or revoke the registration of any such processor, if the

Continued

The Commission preliminarily believes that potential consumers of SBS market data would benefit from the Commission having the additional authority over a registered SDR/SIP provided by Sections 11A(b)(5) and 11A(b)(6) of the Exchange Act to help ensure that these entities offer their SBS market data on terms that are fair and reasonable and not unreasonably discriminatory.

2. Costs

The Commission preliminarily believes that the costs of proposed Rule 909 would be minimal. As noted above, proposed Rule 909 would impose an initial one-time cost on each registered SDR associated with the submission of Form SIP.[368] The Commission notes that Form SDR, which all SDRs would be required to complete and submit to the Commission pursuant to proposed Rule 13n-1 under the Exchange Act,[369] and Form SIP are similar in many respects. Thus, the Commission preliminarily believes that a registered SDR, which must complete Form SDR, would be able to complete Form SIP more easily and with less cost than otherwise would be the case. The Commission preliminarily estimates that the one-time cost to each SDR to complete Form SIP would be about one-quarter the cost of completing proposed Form SDR, or approximately $14,600.[370] In addition, the Commission preliminarily estimates that each SDR would incur approximately one half of the ongoing annual costs—corresponding to an average of six months of operations—during the first year. The Commission preliminarily estimates this cost would be approximately $730 per SDR/SIP.[371]

With regard to ongoing costs, the Commission preliminarily estimates that the aggregate annualized cost for providing amendments to Form SIP would be one-tenth of the cost to complete the initial Form SIP, or approximately $1,460 per SDR/SIP.[372] This figure is based on a preliminary estimate that each registered SDR would submit one amendment on Form SIP each year. SIP registration also would require a registered SDR to provide notice to the Commission of prohibitions or limitations on access to its services. The Commission preliminarily believes that the notice would be a simple form, and that prohibitions or limitations on access to information provided by a registered SDR would be not be prevalent. Thus, the Commission does not believe that providing such notice would result in economically significant costs.

Accordingly, the Commission preliminarily estimates that the initial aggregate annualized costs associated with proposed Rule 909 would be approximately $153,300, which corresponds to $15,330 per registered SDR.[373] The Commission further preliminary estimates that the ongoing aggregate annualized costs associated with proposed Rule 909 would be approximately $14,600, or an ongoing annual cost of approximately $1,460 for each registered SDR/SIP.[374] The Commission solicits comments as to the accuracy of these estimates.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 909 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

289. How can the Commission more accurately estimate the costs and benefits?

290. Would proposed Rule 909 create any additional costs or benefits not discussed here?

291. Are the Commission's preliminary estimates reasonable?

292. Is SIP registration likely to impose costs not addressed? If so, what are they?

K. Implementation of Security-Based Swap Reporting and Dissemination—Rule 910 of Regulation SBSR

1. Benefits

Proposed Rule 910 addresses implementation of the obligations imposed by proposed Regulation SBSR. Proposed Rule 910(a) would require a reporting party to report to a registered SDR any pre-enactment SBSs subject to reporting under proposed Rule 901(i) no later than January 12, 2012 (180 days after the effective date of the Dodd-Frank Act). The proposed timeframe would help ensure that the Commission has relevant information about SBS transactions necessary to prepare reports required by the Dodd-Frank Act.[375] Further, proposed Rule 910 would help ensure timely implementation of Regulation SBSR, and thereby facilitate achievement of the goals articulated in the Dodd-Frank Act.

Proposed Rule 910(b) would establish a phase-in period for each SDR that registers with the Commission, as well as its participants. The phase-in period would give both the registered SDR and its participants a reasonable period in which to acquire or configure the necessary systems, engage and train the necessary staff, and develop and implement the necessary policies and procedures to implement the proposed rules. In the absence of the measured and incremental approach specified in proposed Rule 910(b), market participants might not evaluate and develop their systems, processes, and procedures with sufficient care and analysis. Furthermore, without the phase-in period afforded by proposed Rule 910(b), registered SDRs and their participants could be forced to devote an undue amount of capital and resources to becoming compliant with proposed Regulation SBSR, thus diverting capital and resources from other productive endeavors.

2. Costs

The Commission preliminarily believes that proposed Rule 910(a) would not require reporting parties to materially change their current practices or operations with respect to recordkeeping for the pre-enactment SBSs or transitional SBSs. Any reporting party, as part of its regular business operations, would already maintain records covering most if not all of the data elements associated with a SBS. Furthermore, proposed Rule 910(a) would not require reporting parties to report any data elements (such as the

Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors, or to assure the prompt, accurate, or reliable performance of the functions of such SIP, and that such SIP has violated or is unable to comply with any provision of this title or the rules or regulations thereunder.

[368] *See supra* Section XII.J.

[369] *See* SDR Registration Proposing Release, *supra* note 6.

[370] The Commission derived its estimate from the following: [(Compliance Attorney (37.5 hours) at $291 per hour) + (Compliance Clerk (62.5 hours) at $59 per hour)] = $14,600. *See* Section XII(J) *supra;* SDR Registration Proposing Release, *supra* note 6.

[371] The Commission derived its estimate from the following: [($1,460/2)] = $730. *See infra* note 372.

[372] The Commission derived its estimate from the following: [($14,600) × (0.1)] = $1,460. *See supra* note 370.

[373] The Commission derived its estimate from the following: [(($14,600) + ($730)) × (10 registered SDRs)] = $153,300. *See supra* notes 370 and 371.

[374] The Commission derived its estimate from the following: [($1,460) × (10 registered SDRs)] = $14,600. *See supra* notes 372.

[375] *See* Section 719 of the Dodd-Frank Act.

time of execution) that were not already available. Therefore, proposed Rule 910(a) would not require reporting parties to search for or reconstruct any missing data elements.

To comply with the reporting obligations of proposed Rule 910(a), reporting parties likely would incur many of the costs that they otherwise would incur in order to comply with proposed Rule 901.[376] Because of the substantial overlap between the costs necessitated by proposed Rule 910 and proposed Rule 901 (for reporting parties) and proposed Rule 902, the Commission preliminarily estimates that that the initial annualized, cost for each reporting party associated with proposed Rule 910 would be *de minimis.*

The Commission preliminarily estimates two types of costs associated with proposed Rule 910(b): One stemming from the possibility that the phase-in period is too long and the other stemming from the possibility that the phase-in period is too short. If the phase-in period were too long, the benefits from better recordkeeping and regulatory information, as well as from post-trade transparency in the SBS market, would be inappropriately delayed. However, if the phase-in period were too short, market participants might not have enough time to develop appropriate systems and procedures to effectively implement proposed Regulation SBSR. In proposing Rule 910(b), the Commission seeks an appropriate balance between these two considerations.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 910 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

293. How can the Commission more accurately estimate the costs and benefits?

294. Would proposed Rule 910 create any additional costs or benefits not discussed here?

295. How many entities would be affected by the rule?

296. Are there additional costs involved in complying with the proposed rule that have not been identified? What are the types, and amounts, of the costs?

297. Are there additional benefits from the rule that have not been identified? If so, please identify and quantify to the extent feasible.

L. Prohibition During Phase-In Period—Rule 911 of Regulation SBSR

Proposed Rule 911 would provide that a reporting party to a SBS would not report a SBS to a registered SDR in a phase-in period described in proposed Rule 910 during which the registered SDR is not yet required to publicly disseminate transaction reports for that SBS instrument unless: (1) The SBS is also reported to an registered SDR that is disseminating transaction reports for that SBS instrument consistent with proposed Rule 902; or (b) No other registered SDR is able to receive, hold, and publicly disseminate transaction reports regarding that SBS instrument.

1. Benefits

The Commission preliminarily believes that proposed Rule 911 would have two clear benefits to the marketplace. First, it is meant to preserve the goal of post-trade transparency for SBSs, as codified in the Dodd-Frank Act, even as new SDRs are phased in, as specified in proposed Rule 910, during which time they may have no obligation or only a limited obligation to publicly disseminate SBS data. Second, the proposed rule would prevent reporting parties from engaging in regulatory arbitrage by avoiding reporting SBS data to an existing registered SDR that is publicly disseminating SBS transaction reports and instead reporting only to a new SDR subject to a phase-in period, in an effort to avoid having their SBS transactions publicly disseminated in real time. Proposed Rule 911 would prohibit such conduct.

2. Costs

The Commission believes that the costs imposed by proposed Rule 911 on reporting parties and registered SDRs would be minimal, as the rule would restrict the ability of a reporting party to report a SBS to one registered SDR rather than another, but would not otherwise create any quantifiable costs beyond those already required by proposed Rule 901. To the extent there are costs, they may include the following. First, proposed Rule 911 potentially could dampen competition among those entities considering registering as SDRs. Potential SDR registrants could perceive the proposed rule as a barrier to entry to the marketplace insofar as their business may be limited during the phase-in period. Second, as a result of proposed Rule 911, there may be some costs associated with double-reporting of SBS information—both to an existing SDR as well as to a new SDR in a phase-in period. Indeed, proposed Rule 911 contemplates the potential of such double-reporting. This could result require regulators to incur costs to accurately identify double-counted transactions, where the same SBS transaction is captured by two different registered SDRs.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 911 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

298. How can the Commission more accurately estimate the costs and benefits?

299. Would proposed Rule 911 create any additional costs or benefits not discussed here?

M. Amendments to Rule 31

Rule 31 under the Exchange Act[377] sets forth a procedure for the calculation and collection of fees payable under Section 31 of the Exchange Act.[378] The Dodd-Frank Act classifies SBSs as securities,[379] thereby subjecting them to Section 31 fees. The proposed amendment to Rule 31 would add "security-based swaps" to the list of "exempt sales," and thereby exempt SBSs from Section 31 fees.[380]

The Commission preliminarily believes that the proposed amendments to Rule 31 would have a neutral effect on existing costs and benefits. It would not impose any additional costs or impact the transaction fees currently paid on other securities transactions. Likewise, because market participants have never monitored or collected fees on SBS transactions, there would be no benefit to exempting these transactions from Section 31 fees other than that affected entities would not have to take any steps to pay fees on SBS transactions.

However, eliminating Section 31 fee for SBS transactions theoretically could result in slightly higher fees on transactions in other securities that would not benefit from a Section 31

[376] *See supra* Section XIV.B.2.

[377] 17 CFR 240.31.

[378] 15 U.S.C. 78ee.

[379] *See* 15 U.S.C. 78c(a)(10).

[380] The Commission is also proposing to make a technical correction to Rule 31(a)(10)(ii), to correct a date (from "September 30" to "September 25"), as required by the Dodd-Frank Act. The Commission does not believe there are any material costs or benefits to this change.

exemption. Section 31 requires the Commission to adjust Section 31 fees so that such rates are reasonably likely to produce aggregate fee collections that equal amounts prescribed under Section 31.[381] Thus, although the Commission may exempt certain securities from Section 31, it cannot reduce the total amount of fees that it is required to collect under Section 31. An exemption granted to certain securities could, therefore, result in a higher rate paid on transactions in the other, non-exempted securities.

The Commission requests comment on the costs and benefits of the proposed amendments to Rule 31, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits.

N. Aggregate Total Costs

Based on the foregoing, the Commission preliminarily estimates that proposed Regulation SBSR would impose an aggregate total first-year cost of approximately $1,038,947,500 on all covered entities.[382] This amount includes an estimated total first-year cost of approximately $852,850,500 on participants (reporting parties and non-reporting parties), and approximately $186,097,000 on registered SDRs. The Commission preliminarily estimates that proposed Regulation SBSR would impose a total ongoing annualized aggregate cost of approximately $703,147,540 for all covered entities.[383] This amount includes an estimated total ongoing annualized cost of approximately $598,021,500 on participants (reporting parties and non-reporting parties), and approximately $105,126,040 on registered SDRs.

With regard to registered SDRs, the Commission preliminarily estimates that proposed Regulation SBSR would impose an initial aggregate one-time cost of approximately $80,978,260,[384] and an ongoing aggregate annual cost of $105,126,400.[385] The Commission further preliminarily estimates that the proposed SDR registration rules would impose an initial aggregate one-time cost of approximately $214,913,592,[386] and an ongoing aggregate annual cost of approximately $140,302,120 on registered SDRs.[387] Summing these estimates, proposed Regulation SBSR and the proposed SDR registration rules would impose initial costs on registered SDRs of approximately $295,891,852,[388] and ongoing annualized costs on registered SDRs of approximately $245,428,520.[389]

XV. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act [390] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act [391] requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

A. Analysis of Proposed Regulation SBSR

The Commission preliminarily believes that public availability of transaction and pricing data for SBSs, as required by the Dodd-Frank Act and implemented by proposed Regulation SBSR, would promote efficiency, competition, and capital formation by reducing information asymmetries, lowering transaction costs, and encouraging market participation from a larger number of firms. Public, real-time dissemination of last-sale information aids dealers in deriving appropriate quotations, and aids investors in evaluating current quotations—thus furthering efficient price discovery. Increased transparency ultimately should provide the opportunity for increased competition among market participants and thus contribute to a more efficient market. The Commission believes that knowledge that all market participants are subject to the same reporting rules and can see the same price information creates certainty, fosters investor confidence, and promotes participation in the markets.

The Commission's experience with other asset classes is that post-trade transparency reduces transaction costs. For example, a number of studies have found that post-trade transparency in the corporate bond market, resulting from the introduction of TRACE, has reduced transaction costs.[392] Post-trade transparency could have the same effect in the SBS market, although the Commission acknowledges that the differences between the SBS market and other securities markets might be sufficiently great that post-trade transparency might not have the same effects in the SBS market. The Commission requests comment on whether post-trade transparency would have a similar effect on the SBS market as it has in other securities markets—and if not, why not. To the extent that post-trade transparency in the SBS

[381] *See* 15 U.S.C. 78ee(j).

[382] The Commission derived its estimate from the following: [($511,013,000 proposed Rule 901 first-year costs on reporting parties) + ($778,480 proposed Rule 901 first-year costs on registered SDRs) + ($64,006,400 proposed Rule 902 first-year costs on registered SDRs) + ($27,360 proposed Rule 904 first-year costs on registered SDRs) + ($11,419,000 proposed Rule 905 first-year costs on reporting parties) + ($5,603,700 proposed Rule 905 first-year costs on registered SDRs) + ($172,280,000 proposed Rule 905 first-year costs on non-reporting parties) + ($82,176,000 proposed Rule 906 first-year costs on reporting parties) + ($600,760 proposed Rule 906 first-year costs on registered SDRs) + ($75,962,500 proposed Rule 906 first-year costs on all SDR participants) + ($114,927,000 proposed Rule 907 first-year costs on registered SDRs) + ($153,300 proposed Rule 909 first-year costs on registered SDRs)] = $1,038,947,500.

[383] The Commission derived its estimate from the following: [($316,116,000 proposed Rule 901 ongoing annual costs on reporting parties) + ($436,440 proposed Rule 901 ongoing annual costs on registered SDRs) + ($24,002,400 proposed Rule 902 ongoing annual costs on registered SDRs) + ($27,360 proposed Rule 904 ongoing annual costs on registered SDRs) + ($3,927,000 proposed Rule 905 ongoing annual costs on reporting parties) + ($3,735,800 proposed Rule 905 ongoing annual costs on registered SDRs) + ($172,280,000 proposed Rule 905 ongoing annual costs on non-reporting parties) + ($29,736,000 proposed Rule 906 ongoing annual costs on reporting parties) + ($292,440 proposed Rule 906 ongoing annual costs on registered SDRs) + ($75,962,500 proposed Rule 906 ongoing annual costs on all SDR participants) + ($76,617,000 proposed Rule 907 ongoing annual costs on registered SDRs) + ($14,600 proposed Rule 909 ongoing annual costs on registered SDRs)] = $703,147,540.

[384] The Commission derived its estimate from the following: [($342,040 proposed Rule 901 one-time costs on registered SDRs) + ($40,004,000 proposed Rule 902 one-time costs on registered SDRs) + ($1,867,900 proposed Rule 905 one-time costs on registered SDRs) + ($308,320 proposed Rule 906 one-time costs on registered SDRs) + ($38,310,000 proposed Rule 907 one-time costs on registered SDRs) + ($146,000 proposed Rule 909 one-time costs on registered SDRs)] = $80,978,260.

[385] The Commission derived its estimate from the following: [($436,440 proposed Rule 901 ongoing annual costs on registered SDRs) + ($24,002,400 proposed Rule 902 ongoing annual costs on registered SDRs) + ($27,360 proposed Rule 904 ongoing annual costs on registered SDRs) + ($3,735,800 proposed Rule 905 ongoing annual costs on registered SDRs) + ($292,440 proposed Rule 906 ongoing annual costs on registered SDRs) + ($76,617,000 proposed Rule 907 ongoing annual costs on registered SDRs) + ($14,600 proposed Rule 909 ongoing annual costs on registered SDRs)] = $105,126,400.

[386] *See* SDR Registration Proposing Release, *supra* note 6.

[387] *See id.*

[388] The Commission derived its estimate from the following: [($80,978,260) + ($214,913,592)] = $295,891,852.

[389] The Commission derived its estimate from the following: [($105,126,400) + ($140,302,120)] = $245,428,520.

[390] 15 U.S.C. 78c(f).

[391] 15 U.S.C. 78w(a)(2).

[392] *See supra* note 88.

market would lower transaction costs, this would be evidence of greater competition and efficiency. Furthermore, money saved in transaction costs can assist in additional capital formation.

The proposed rules on block trades of SBSs are designed to minimize any adverse impact on efficiency, competition, and capital formation. Though temporarily withholding the full size of a block trade may have some immediate adverse effect on efficiency, as other market participants would lack complete real-time information about large transactions, the Commission's approach is designed to promote efficiency in the longer-term, by allowing SBS market participants to engage in large transactions without the risk of other market participants using this information in ways that promote artificial and adverse short-term price movements. Encouraging such market participants to continue to execute in large size is designed to promote efficiency, competition, and capital formation. The Commission requests comment on the effect of its proposed block trade rules on these considerations.

Proposed Regulation SBSR is designed to provide the Commission and other regulators with detailed, up-to-date information about both positions of particular entities and financial groups as well as positions by multiple market participants in particular instruments. A well-regulated SBS market—where the Commission and other regulators have access to information about all SBS transactions captured and retained in the registered SDRs—could increase the confidence in the soundness and fairness of the market, potentially drawing additional participants and thereby increasing efficiency. The Commission and other regulators also would have greater information with which to surveil the SBS market and bring appropriate enforcement actions. Together, these regulatory factors should have a positive impact on efficiency, competition, and capital formation.

The Commission preliminarily believes that post-trade transparency in the SBS market could improve market participants' ability to value SBSs. In transparent markets with sufficient liquidity, valuations generally can be derived from recent quotations and/or last-sale prices. However, in opaque markets or markets with low liquidity, recent quotations or last-sale prices may not exist or, if they do exist, may not be widely available. Therefore, market participants holding assets that trade in opaque markets or markets with low liquidity frequently rely instead on pricing models. These models might be based on assumptions subject to the evaluator's discretion, and can be imprecise. Thus, market participants holding the same asset but using different valuation models might arrive at significantly different values for the same asset.

The Commission preliminarily believes that post-trade transparency, even in relatively illiquid markets—such as corporate bonds or SBSs—could represent an improvement over relying on valuation models alone, particularly if post-trade information is used as an input to, rather than a substitute for, independent valuation and pricing decisions by other market participants. Market participants might devise means to consider last-sale reports of the asset to be valued, reports of related assets, or reports of benchmark products that include the asset to be valued or closely related assets. There is evidence to suggest that post-trade transparency helps reduce the range of valuations of assets that trade in illiquid markets.[393] The Commission preliminarily believes that post-trade transparency in the SBS market could result in more accurate valuations of SBSs generally, as all market participants would have the benefit of knowing how counterparties to an SBS valued the SBS at a specific moment in time. Especially with complex instruments, investment decisions generally are predicated on a significant amount of due diligence to value the instrument properly. A post-trade transparency system permits other market participants to derive at least some informational benefit from obtaining the views of the two counterparties who traded that instrument.

Better valuations could have a significant impact on efficiency and capital allocation. Efficient allocation of capital is premised on accurate knowledge of asset prices. Overvaluing asset prices could result in a misallocation of capital, as investors seek to obtain more of an asset that cannot deliver the anticipated risk-adjusted return. By the same token, assets that are inappropriately undervalued represent investment opportunities that might go unpursued, because investors do not realize that a good risk-adjusted return is available. To the extent that post-trade transparency enables asset valuations to move closer to their fundamental values, capital may be more efficiently allocated.

Better valuations resulting from post-trade transparency also could reduce prudential and systemic risks. Some financial institutions, including many of the most systemically important financial institutions, have large portfolios of SBSs. The financial system would benefit greatly if the assets of these institutions were more accurately valued. To the extent that post-trade transparency affirms the valuation of an institution's portfolio, regulators, the individual firm, and the market as a whole would have more certainty as to whether the firm would or would not pose prudential or systemic risks. In some cases, however, post-trade transparency in the SBS market might cause an individual firm to revalue its positions and lower the overall value of its portfolio. The sooner that accurate valuations can be made, the more quickly that regulators and the individual firm can take appropriate steps to minimize the firm's prudential risk profile, and the more quickly that regulators and other market participants can take appropriate steps to address any systemic risk concerns raised by that firm.

Finally, the Commission has considered how proposed Regulation SBSR could affect market participation generally, measured by both the number of market participants and the number of SBSs executed. The regulatory environment created by proposed Regulation SBSR would permit all market participants to see last-sale prices in real time, and could thereby incentivize more market participants to enter the market, trade more frequently, and compete with large dealers on price. Reducing information asymmetries is pro-competitive, because it reduces the competitive advantage that certain market participants have solely because they have access to more or better information about the market. Reducing information asymmetries also reduces the likelihood that a less-informed market participant would enter into a trade at an imprudent price. To the extent that fewer such trades occur, efficiency and capital formation could be improved. Moreover, proposed Regulation SBSR could result in greater confidence in the market generally, which could have a beneficial impact on efficiency, competition, and capital formation.

It is also possible that implementing post-trade transparency in the SBS market and the costs of complying with proposed Regulation SBSR could cause some market participants to execute fewer SBSs or to exit the market completely. This could result in a detrimental impact on efficiency,

[393] *See supra* note 314.

competition, and capital formation. For example, certain market participants that are currently active in the SBS market might find the costs of complying with proposed Regulation SBSR too high. If these market participants respond by reducing their trading activity or exiting the market completely, competition could suffer because there would be fewer participants competing in the market. Moreover, efficiency could suffer because risk that otherwise might have been allocated to the market participant optimally suited to manage it would, if that participant has left the market, necessarily have to reside at a suboptimal location. Moreover, capital formation could be negatively impacted if market participants with risks to hedge find it more difficult or costly to find a counterparty with which to transact and instead reserve more capital against the risk of loss.

On the other hand, the possibility exists that, in certain circumstances, efficiency, competition, and capital formation would be positively impacted even if fewer SBS transactions occur because of proposed Regulation SBSR. This could be the case if market participants that are unable or unwilling to properly manage the attendant risks of participation in the SBS market are deterred from participating, or if there were a reduction in the number of SBS transactions where there is a significant information asymmetry between the counterparties. In the latter case, efficiency, competition, and capital formation could benefit if uninformed parties are deterred from unwittingly taking on imprudent positions in the SBS market.

It is difficult at this stage to ascertain how proposed Regulation SBSR and other measures to implement the Dodd-Frank Act might increase or decrease participation in the SBS market, and what impacts such an increase or decrease might have on efficiency, competition, and capital formation. However, the Commission requests comment on those impacts.

B. Analysis of Amendments to Rule 31 Under the Exchange Act

The Commission preliminarily believes that the proposed amendments to Rule 31 under the Exchange Act would have no significant impact on efficiency, competition, and capital formation. Exempting SBSs from Section 31 fees should have little or no impact on the overall amount of fees collected by the Commission, as the Commission is required to adjust the fee rate to a level that is reasonably likely to produce the aggregate fee collections stipulated in Section 31(d).[394] Exempting SBSs from Section 31 fees would result in other classes of securities that remain subject to Section 31 fees continuing to bear the burden of meeting the aggregate fee collection. Allowing SBSs to become subject to Section 31 fees, however, could result in a competitive imbalance between brokers and SBS dealers. Specifically, the burden for funding Section 31 fees would fall on brokers, rather than SBS dealers. Exempting SBSs from Section 31 fees, therefore, would avoid this concern and any impact it might have on the development of the SBS market.

The Commission requests comment on all aspects of this analysis and, in particular, on whether proposed Regulation SBSR and the proposed amendments to Rule 31 under the Exchange Act would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

XVI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") [395] the Commission must advise the OMB whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of proposed Regulation SBSR on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

XVII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA") [396] requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[397] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities." [398] Section 605(b) of the RFA [399] states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an "issuer" or a "person," other than an investment company, an "issuer" or "person" that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [400] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[401] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[402]

Based on input from SBS market participants and its own information, the Commission preliminarily believes that the majority of SBS transactions have at least one counterparty that is either as SBS dealer or major SBS participant, and that these entities—whether registered broker-dealers or not—would exceed the thresholds defining "small entities" set out above. Accordingly, neither of these types of entities would likely qualify as small entities for purposes of the RFA.

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[394] *See* 15 U.S.C. 78ee(j).

[395] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[396] 5 U.S.C. 601 *et seq.*

[397] 5 U.S.C. 603(a).

[398] Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[399] 5 U.S.C. 605(b).

[400] *See* 17 CFR 240.0–10(a).

[401] 17 CFR 240.17a–5(d).

[402] *See* 17 CFR 240.0–10(c).

Moreover, even in cases where one of the counterparties to an SBS is not covered by these definitions, the Commission preliminarily does not believe that any such entities would be "small entities" as defined in Commission Rule 0–10. Feedback from industry participants and the Commission's own information about the SBS market indicate that only persons or entities with assets significantly in excess of $5 million participate in the SBS market. For example, as revealed in a current survey conducted by Office of the Comptroller of the Currency, 99.9% of CDS positions by U.S. Commercial Banks and Trusts are held by those with assets over $10 billion.[403] Given the magnitude of this figure, and the fact that it so far exceeds $5 million, the Commission preliminarily believes that the vast majority of, if not all, SBS transactions are between large entities for purposes of the RFA.

In addition, the Commission preliminarily believes that the entities likely to register as SDRs would not be small entities. Based on input from SBS market participants and its own information, the Commission preliminarily believes that most if not all the registered SDRs would be part of large business entities, and that all registered SDRs would have assets exceeding $5 million and total capital exceeding $500,000. Therefore, the Commission preliminarily believes that none of the registered SDRs would be small entities.

On this basis, the Commission preliminarily believes that the number of SBS transactions involving a small entity as that term is defined for purposes of the RFA would be *de minimis.* Moreover, the Commission does not believe that any aspect of proposed Regulation SBSR would be likely to alter the type of counterparties presently engaging in SBS transactions. Therefore, the Commission preliminarily does not believe that proposed Regulation SBSR would impact any small entities.

For the foregoing reasons, the Commission certifies that Regulation SBSR would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, indicate whether they believe that participants and registered SDRs are unlikely to be small entities, and provide empirical data to support their responses.

[403] *See* Office of the Comptroller of the Currency, "Quarterly Report on Bank Trading and Derivatives Activities Second Quarter 2010" (2010).

XVIII. Statutory Basis and Text of Proposed Rule

The Commission is proposing to adopt Regulation SBSR, and Rule 900–911 thereunder, pursuant to the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 242

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 240.31 by:

a. Removing "September 30" at the beginning of paragraph (a)(10)(ii) and adding in its place "September 25";

b. Removing the "and" at the end of paragraph (a)(11)(vii);

c. Removing the period at the end of paragraph (a)(11)(viii) and adding in its place "; and";

d. Adding paragraph (a)(11)(ix); and

e. Adding new paragraph (a)(19) to read as follows:

§ 240.31 Section 31 transaction fees.

(a) * * *

(11) * * *

(ix) Any sale of a security-based swap.

* * * * *

(19) The term *security-based swap* has the same definition as provided in Section 3(a)(68) of the Act (15 U.S.C. 78c(a)(68)).

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PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

3. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–l(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37, unless otherwise noted.

4. The part heading for part 242 is revised as set forth above.

5. Add §§ 242.900, 242.901, 242.902, 242.903, 242.904, 242.905, 242.906, 242.907, 242.908, 242.909, 242.910, and 242.911 to read as follows:

§ 242.900 Definitions.

Terms used in this Regulation SBSR (§§ 242.900 through 242.911) that appear in Section 3 of the Exchange Act (15 U.S.C. 78c) have the same meaning as in Section 3 of the Exchange Act (15 U.S.C. 78c) and the rules or regulations thereunder. In addition, the following definitions shall apply:

Affiliate means any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person.

Asset class means those security-based swaps in a particular broad category, including, but not limited to, credit derivatives, equity derivatives, and loan-based derivatives.

Block trade means a large notional security-based swap transaction that meets the criteria set forth in § 242.907(b).

Broker ID means the UIC assigned to a person acting as a broker for a participant.

Confirm means the production of a confirmation that is agreed to by the parties to be definitive and complete and that has been manually, electronically, or, by some other legally equivalent means, signed.

Control means, for purposes of §§ 242.900 through 242.911, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(1) Is a director, general partner or officer exercising executive responsibility (or having similar status or functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(3) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

Derivatives clearing organization means the same as provided under the Commodity Exchange Act.

Desk ID means the UIC assigned to the trading desk of a participant or of a broker of a participant.

Effective reporting date, with respect to a security-based swap data repository, means the date six months after the registration date.

Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), as amended.

Life cycle event means, with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901, including a counterparty change resulting from an assignment or novation; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.

Parent means a legal person that controls a participant.

Participant means:

(1) A U.S. person that is a counterparty to a security-based swap that is required to be reported to a registered security-based swap data repository; or

(2) A non-U.S. person that is a counterparty to a security-based swap that is:

(i) Required to be reported to a registered security-based swap data repository; and

(ii) Executed in the United States or through any means of interstate commerce, or cleared through a clearing agency that has its principal place of business in the United States.

Participant ID means the UIC assigned to a participant.

Phase-in period means the period immediately after a security-based swap data repository has registered with the Commission during which it is not required to disseminate security-based swap data pursuant to an implementation schedule, as provided in § 242.910.

Pre-enactment security-based swap means any security-based swap executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act (Pub. L. 111–203, H.R. 4173)), the terms of which had not expired as of that date.

Price means the price of a security-based swap transaction, expressed in terms of the commercial conventions used in that asset class.

Product ID means the UIC assigned to a security-based swap instrument.

Publicly disseminate means to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.

Real time means, with respect to the reporting of security-based swap information, as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the security-based swap transaction.

Registered security-based swap data repository means a security-based swap data repository that is registered with the Commission pursuant to Section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and any rules or regulations thereunder.

Registration date, with respect to a security-based swap data repository, means the date on which the Commission registers the security-based swap data repository, or, if the Commission registers the security-based swap data repository before the effective date of §§ 242.900 through 242.911.

Reporting party means the counterparty to a security-based swap with the duty to report information in accordance with §§ 242.900 through 242.911 to a registered security-based swap data repository, or if there is no registered security-based swap data repository that would receive the information, to the Commission.

Security-based swap instrument means each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.

Time of execution means the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.

Trader ID means the UIC assigned to a natural person who executes security-based swaps.

Transaction ID means the unique identification code assigned by a registered security-based swap data repository to a specific security-based swap.

Transitional security-based swap means a security-based swap executed on or after July 21, 2010, and before the effective reporting date.

Ultimate parent means a legal person that controls a participant and that itself has no parent.

Ultimate parent ID means the UIC assigned to an ultimate parent of a participant.

Unique Identification Code or *UIC* means the unique identification code assigned to a person, unit of a person, or product by or on behalf of an internationally recognized standards-setting body that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory. If no standards-setting body meets these criteria, a registered security-based swap data repository shall assign all necessary UICs using its own methodology. If a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, a registered security-based swap data repository shall assign a UIC to that person, unit of a person, or product using its own methodology.

U.S. person means a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of business in the United States.

§ 242.901 Reporting obligations.

(a) *Reporting party.* The reporting party shall be as follows:

(1) Where only one counterparty to a security-based swap is a U.S. person, the U.S. person shall be the reporting party;

(2) Where both counterparties to a security-based swap are U.S. persons:

(i) With respect to a security-based swap in which only one counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall be the reporting party;

(ii) With respect to a security-based swap in which one counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall be the reporting party; and

(iii) With respect to any other security-based swap not described in paragraphs (a)(2)(i) and (ii) of this section, the counterparties to the security-based swap shall select a counterparty to be the reporting party.

(3) If neither counterparty is a U.S. person but the security-based swap meets the criteria of § 242.908(a)(2) or (a)(3), the counterparties to the security-based swap shall select a counterparty to be the reporting party.

(b) *Recipient of security-based swap information.* For each security-based swap for which it is the reporting party, the reporting party shall provide the information required by §§ 242.900 through 242.911 to a registered security-based swap data repository or, if there is no registered security-based swap

data repository that would accept the information, to the Commission.

(c) *Information to be reported in real time.* For each security-based swap for which it is the reporting party, the reporting party shall report the following information in real time:

(1) The asset class of the security-based swap and, if the security-based swap is an equity derivative, whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based;

(2) Information that identifies the security-based swap instrument and the specific asset(s) or issuer(s) of any security on which the security-based swap is based;

(3) The notional amount(s), and the currency(ies) in which the notional amount(s) is expressed;

(4) The date and time, to the second, of execution, expressed using Coordinated Universal Time (UTC);

(5) The effective date;

(6) The scheduled termination date;

(7) The price;

(8) The terms of any fixed or floating rate payments, and the frequency of any payments;

(9) Whether or not the security-based swap will be cleared by a clearing agency;

(10) If both counterparties to a security-based swap are security-based swap dealers, an indication to that effect;

(11) If applicable, an indication that the transaction does not accurately reflect the market; and

(12) If the security-based swap is customized to the extent that the information provided in paragraphs (c)(1) through (11) of this section does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, an indication to that effect.

(d) *Additional information that must be reported.* (1) In addition to the information required under paragraph (c) of this section, for each security-based swap for which it is the reporting party, the reporting party shall report:

(i) The participant ID of each counterparty;

(ii) As applicable, the broker ID, desk ID, and trader ID of the reporting party;

(iii) The amount(s) and currency(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each counterparty to the other;

(iv) The title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement;

(v) The data elements necessary for a person to determine the market value of the transaction;

(vi) If the security-based swap will be cleared, the name of the clearing agency;

(vii) If the security-based swap is not cleared, whether the exception in Section 3C(g) of the Exchange Act was invoked;

(viii) If the security-based swap is not cleared, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; and

(ix) The venue where the security-based swap was executed.

(2) Any information required to be reported pursuant to paragraph (d)(1) of this section must be reported promptly, but in no event later than:

(i) Fifteen minutes after the time of execution for a security-based swap that is executed and confirmed electronically;

(ii) Thirty minutes after the time of execution for a security-based swap that is confirmed electronically but not executed electronically; or

(iii) Twenty-four hours after the time of execution for a security-based swap that is not executed or confirmed electronically.

(e) *Duty to report any life cycle event of a security-based swap.* For any life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to paragraph (c), (d), or (i) of this section, the reporting party shall promptly provide updated information reflecting such change to the entity to which it reported the original transaction, using the transaction ID, subject to the following exceptions:

(1) If a reporting party ceases to be a counterparty to a security-based swap due to an assignment or novation, the new counterparty shall be the reporting party following such assignment or novation, if the new counterparty is a U.S. person.

(2) If, following an assignment or novation, the new counterparty is not a U.S. person, the counterparty that is a U.S. person shall be the reporting party following such assignment or novation.

(f) *Time stamping incoming information.* A registered security-based swap data repository shall time stamp, to the second, its receipt of any information submitted to it pursuant to paragraph (c), (d), or (e) of this section.

(g) *Assigning transaction ID.* A registered security-based swap data repository shall assign a transaction ID to each security-based swap reported by a reporting party.

(h) *Format of reported information.* The reporting party shall electronically transmit the information required under this section in a format required by the registered security-based data repository, and in accordance with any applicable policies and procedures of the registered security-based swap data repository.

(i) *Reporting of pre-enactment and transitional security-based swaps.* With respect to any pre-enactment security-based swap or transitional security-based swap, the reporting party shall report all of the information required by paragraphs (c) and (d) of this section, to the extent such information is available.

§ 242.902 Public dissemination of transaction reports.

(a) *Dissemination of transaction reports.* Except in the case of a block trade, a registered security-based swap data repository shall publicly disseminate a transaction report of a security-based swap immediately upon receipt of information about the security-based swap from a reporting party, or upon re-opening following a period when the registered security-based swap data repository was closed. The transaction report shall consist of all the information reported by the reporting party pursuant to § 242.901, plus any indicator or indicators contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.

(b) *Dissemination of block trades.* A registered security-based swap data repository shall publicly disseminate a transaction report of a security-based swap that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report shall consist of all the information reported by the reporting party pursuant to § 242.901(c), except for the notional size, plus the transaction ID and an indicator that the report represents a block trade. The registered security-based swap data repository shall publicly disseminate a complete transaction report for such block trade (including the transaction ID and the full notional size) as follows:

(1) If the security-based swap was executed on or after 05:00 UTC and before 23:00 UTC of the same day, the transaction report (including the transaction ID and the full notional size)

shall be disseminated at 07:00 UTC of the following day.

(2) If the security-based swap was executed on or after 23:00 UTC and up to 05:00 UTC of the following day, the transaction report (including the transaction ID and the full notional size) shall be disseminated at 13:00 UTC of that following day.

(3) Notwithstanding the foregoing, if a registered security-based swap data repository is in normal closing hours or special closing hours at a time when it would be required to disseminate information about a block trade pursuant to this section, the registered security-based swap data repository shall instead disseminate information about the block trade immediately upon re-opening.

(c) *Non-disseminated information.* A security-based swap data repository shall not disseminate:

(1) The identity of either counterparty to a security-based swap;

(2) With respect to a security-based swap that is not cleared at a registered clearing agency and that is reported to a registered security-based swap data repository, any information disclosing the business transactions and market positions of any person; or

(3) Any information regarding a security-based swap reported pursuant to § 242.901(i).

(d) *Temporary restriction on other market data sources.* No person other than a registered security-based swap data repository shall make available to one or more persons (other than a counterparty) transaction information relating to a security-based swap before the earlier of 15 minutes after the time of execution of the security-based swap; or the time that a registered security-based swap data repository publicly disseminates a report of that security-based swap.

§ 242.903 Coded information.

A reporting party may provide information to a registered security-based swap data repository pursuant to § 242.901 and a registered security-based swap data repository may publicly disseminate information pursuant to § 242.902 using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.

§ 242.904 Operating hours of registered security-based swap data repositories.

A registered security-based swap data repository shall have systems in place to continuously receive and disseminate information regarding security-based swaps pursuant to §§ 242.900 through 242.911, subject to the following exceptions:

(a) A registered security-based swap data repository may establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered security-based swap data repository shall provide reasonable advance notice to participants and to the public of its normal closing hours.

(b) A registered security-based swap data repository may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered security-based swap data repository shall: to the extent reasonably possible under the circumstances, avoid scheduling special closing hours during when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

(c) During normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository shall have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.911.

(d) When a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it shall disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902.

(e) If a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.911, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.911, but could not do so because of the registered security-based swap data repository's inability to receive and hold in queue data, must immediately report the information to the registered security-based swap data repository.

§ 242.905 Correction of errors in security-based swap information.

(a) *Duty of counterparties to correct.* Any counterparty to a security-based swap that discovers an error in information previously reported pursuant to §§ 242.900 through 242.911 shall correct such error in accordance with the following procedures:

(1) If a counterparty that was not the reporting party for a security-based swap discovers an error in the information reported with respect to such security-based swap, the counterparty shall promptly notify the reporting party of the error; and

(2) If the reporting party for a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from its counterparty of an error, the reporting party shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction report. If the reporting party reported the initial transaction to a registered security-based swap data repository, the reporting party shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by § 242.907(a)(3).

(b) *Duty of registered security-based swap data repository to correct.* A registered security-based swap data repository shall:

(1) Upon discovery of the error or receipt of a notice of the error from a reporting party, verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information regarding such security-based swap contained in its system; and

(2) If such erroneous information falls into any of the categories of information enumerated in § 242.901(c), publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the parties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

§ 242.906 Other duties of participants.

(a) *Reporting by non-reporting-party counterparty.* A registered security-based swap data repository shall identify any security-based swap reported to it for which the registered security-based swap data repository does not have the participant ID and (if applicable) the broker ID, desk ID, and trader ID of each counterparty. Once a day, a registered security-based swap data repository shall send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered security-based swap data repository lacks participant ID and (if

applicable) broker ID, desk ID, and trader ID. A participant that receives such a report shall provide the missing information to the registered security-based swap data repository within 24 hours.

(b) *Duty to provide ultimate parent and affiliate information.* Each participant of a registered security-based swap data repository shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and participant IDs. A participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) *Policies and procedures of security-based swap dealers and major security-based swap participants.* Each participant that is a security-based swap dealer or major security-based swap participant shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.911 and the registered security-based swap data repository's applicable policies and procedures. Each such participant shall review and update its policies and procedures at least annually.

§ 242.907 Policies and procedures of registered security-based swap data repositories.

(a) *General policies and procedures.* With respect to the receipt, reporting, and dissemination of data pursuant to §§ 242.900 through 242.911, a registered security-based swap data repository shall establish and maintain written policies and procedures:

(1) That enumerate the specific data elements of a security-based swap or a life cycle event that a reporting party must report, which shall include, at a minimum, the data elements specified in § 242.901(c) and (d);

(2) That specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information;

(3) For specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by § 242.905(b)(2) that the report relates to a previously disseminated transaction;

(4) Describing how reporting parties shall report and, consistent with the enhancement of price discovery, how the registered security-based swap depository shall publicly disseminate, reports of, and adjustments due to, life cycle events; security-based swap transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other security-based swap transactions that, in the estimation of the registered security-based swap data repository, do not accurately reflect the market;

(5) For assigning:

(i) A transaction ID to each security-based swap that is reported to it; and

(ii) UICs established by or on behalf of an internationally recognized standards-setting body that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory (or, if no standards-setting body meets these criteria or a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, using its own methodology).

(6) For periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using ultimate parent IDs and participant IDs.

(b) *Policies and procedures regarding block trades.* (1) A registered security-based swap data repository shall establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all security-based swap instruments reported to the registered security-based swap data repository in accordance with the criteria and formula for determining block size as specified by the Commission.

(2) *Exceptions.* Notwithstanding the above, a registered security-based swap data repository shall not designate as a block trade any security-based swap:

(i) That is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based; or

(ii) Contemplated by Section 13(m)(1)(C)(iv) of the Exchange Act (15 U.S.C. 78m(m)(1)(C)(iv)).

(c) *Public availability of policies and procedures.* A registered security-based swap data repository shall make the policies and procedures required by §§ 242.900 through 242.911 publicly available on its Web site.

(d) *Updating of policies and procedures.* A registered security-based swap data repository shall review, and update as necessary, the policies and procedures required by §§ 242.900 through 242.911 at least annually. Such policies and procedures shall indicate the date on which they were last reviewed.

(e) A registered security-based swap data repository shall have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to §§ 242.900 through 242.911 and the registered security-based swap data repository's policies and procedures thereunder.

§ 242.908 Jurisdictional matters.

(a) Notwithstanding any other provision of §§ 242.900 through 242.911, no security-based swap is required to be reported to a registered security-based swap data repository, and no registered security-based swap data repository is required to publicly disseminate a report of a security-based swap, unless the security-based swap:

(1) Has at least one counterparty that is a U.S. person;

(2) Was executed in the United States or through any means of interstate commerce; or

(3) Was cleared through a clearing agency having its principal place of business in the United States.

(b) Notwithstanding any other provision of §§ 242.900 through 242.911, a counterparty to a security-based swap shall not incur any obligation under §§ 242.900 through 242.911 unless it is:

(1) A U.S. person;

(2) A counterparty to a security-based swap executed in the United States or through any means of interstate commerce; or

(3) A counterparty to a security-based swap cleared through a clearing agency having its principal place of business in the United States.

§ 242.909 Registration of security-based swap data repository as a securities information processor.

A registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SIP (§ 249.1001 of this chapter).

§ 242.910 Implementation of security-based swap reporting and dissemination.

(a) *Reporting of pre-enactment security-based swaps.* The reporting party shall report to a registered

security-based swap data repository any pre-enactment security-based swaps no later than January 12, 2012 (180 days after the effective date of the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1376)).

(b) *Phase-in of compliance dates.* A registered security-based swap data repository and its participants shall be subject to the following phased-in compliance schedule:

(1) *Phase 1,* six months after the registration date (*i.e.,* the effective reporting date):

(i) Reporting parties shall report to the registered security-based swap data repository any transitional security-based swaps.

(ii) With respect to any security-based swap executed on or after the effective reporting date, reporting parties shall comply with §§ 242.901.

(iii) Participants and the registered security-based swap data repository shall comply with § 242.905 (except with respect to dissemination) and § 242.906(a) and (b).

(iv) Participants that are SBS dealers or major SBS participants shall comply with § 242.906(c).

(2) *Phase 2,* nine months after the registration date: *Wave 1* of public dissemination—The registered security-based swap data repository shall comply with § 242.902 and 242.905 (with respect to dissemination of corrected transaction reports) for 50 security-based swap instruments.

(3) *Phase 3,* 12 months after the registration date: *Wave 2* of public dissemination The registered security-based swap data repository shall comply with § 242.902 and 242.905 (with respect to dissemination of corrected transaction reports) for an additional 200 security-based swap instruments.

(4) *Phase 4,* 18 months after the registration date: *Wave 3* of public dissemination—All security-based swaps reported to the registered security-based swap data repository shall be subject to real-time public dissemination as specified in § 242.902.

§ 242.911 Prohibition during phase-in period.

A reporting party shall not report a security-based swap to a registered security-based swap data repository in a phase-in period described in § 242.910 during which the registered security-based swap data repository is not yet required or able to publicly disseminate transaction reports for that security-based swap instrument unless:

(a) The security-based swap is also reported to a registered security-based swap data repository that is disseminating transaction reports for that security-based swap instrument consistent with § 242.902; or

(b) No other registered security-based swap data repository is able to receive, hold, and publicly disseminate transaction reports regarding that security-based swap instrument.

By the Commission.

Dated: November 19, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–29710 Filed 12–1–10; 8:45 am]

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Federal Register

Thursday,
December 2, 2010

Part III

Department of Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode); Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–TP–0039]

RIN: 1904–AC27

Energy Conservation Program for Consumer Products: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: In order to implement recent amendments to the Energy Policy and Conservation Act of 1975 (EPCA), the U.S. Department of Energy (DOE) proposes to amend its test procedures for residential dishwashers, dehumidifiers, and conventional cooking products (which include cooktops, ovens, and ranges) to provide for measurement of standby mode and off mode energy use by these products. The proposed amendments would incorporate into the DOE test procedures relevant provisions from the International Electrotechnical Commission's (IEC) Standard 62301, "Household electrical appliances—Measurement of standby power," First Edition 2005–06 (IEC Standard 62301 (First Edition)). DOE also proposes to adopt definitions of various modes of operation based on the relevant provisions from the IEC Standard 62301 "Household electrical appliances—Measurement of standby power," Second Edition Final Draft International Standard (IEC Standard 62301 (FDIS)). In addition, DOE proposes to adopt language to clarify application of these test procedure provisions for measuring standby mode and off mode power consumption in dishwashers, dehumidifiers, and conventional cooking products. Furthermore, the proposed amendments would add new calculations to determine annual energy consumption associated with the standby mode and off mode measured power. Finally, the amendments would modify existing energy consumption equations to integrate standby mode and off mode energy consumption into the calculation of overall annual energy consumption and annual operating cost of those products which already have definitions for such measures (dishwashers and conventional cooking products). DOE is also announcing a public meeting to discuss and receive comments on the issues presented in this notice.

DATES: *Meeting:* DOE will hold a public meeting on Friday, December 17, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Friday, December 3, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Friday, December 10, 2010.

Comments: DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than February 15, 2011. For details, see section V, "Public Participation," of this NOPR.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures.)

Any comments submitted must identify the NOPR on Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products, and provide the docket number EERE–2010–BT–TP–0039 and/or Regulatory Information Number (RIN) 1904–AC27. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

2. *E-mail: Res-DW-Dehumid-CookingProd-2010-TP-0039@ee.doe.gov*. Include docket number EERE–2010–BT–TP–0039 and/or RIN 1904–AC27 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, "Public Participation," of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Wesley Anderson, Jr., U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7335. E-mail: *Wes.Anderson@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov*.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov*.

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I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the "Energy Conservation Program for Consumer Products Other Than Automobiles," a program covering most major household appliances, including residential dishwashers, conventional cooking products, and dehumidifiers,[1] the subjects of today's notice.[2] (42 U.S.C. 6292(a)(6) and (10); 6295(cc)) Under the Act,[3] this program consists essentially of three parts: (1) Testing; (2) labeling; and (3) Federal energy conservation standards.

Manufacturers of covered products must use DOE test procedures, prescribed under EPCA, to certify that their products comply with the energy conservation standards adopted under EPCA and to represent the energy consumption or energy efficiency of their products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) DOE must also use DOE test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s)) Criteria and procedures for DOE's adoption and amendment of such test procedures, as set forth in EPCA, require that test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) In any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

Dishwashers

DOE's test procedure for dishwashers is found in the Code of Federal Regulations (CFR) at 10 CFR part 430, subpart B, appendix C. DOE originally established its test procedure for dishwashers in 1977. 42 FR 39964 (August 8, 1977). Since that time, the dishwasher test procedure has undergone a number of amendments, as discussed below. In 1983, DOE amended the test procedure to revise the representative average-use cycles to more accurately reflect consumer use and to address dishwashers that use 120 °F inlet water. 48 FR 9202 (March 3, 1983). DOE amended the test procedure again in 1984 to redefine the term "water heating dishwasher." 49 FR 46533 (Nov. 27, 1984). In 1987, DOE amended the test procedure to address models that use 50 °F inlet water. 52 FR 47549 (Dec. 15, 1987). In 2001, DOE revised the test procedure's testing specifications to improve testing repeatability, changed the definitions of "compact dishwasher" and "standard dishwasher," and reduced the average number of use cycles per year from 322 to 264. 66 FR 65091, 65095–97 (Dec. 18, 2001). In 2003, DOE again revised the test procedure to more accurately measure dishwasher efficiency, energy use, and water use. The 2003 dishwasher test procedure amendments included the following revisions: (1) The addition of a method to rate the efficiency of soil-sensing products; (2) the addition of a method to measure standby power; and (3) a reduction in the average-use cycles per year from 264 to 215. 68 FR 51887, 51899–903 (August 29, 2003). The current version of the test procedure includes provisions for determining estimated annual energy use (EAEU), estimated annual operating cost (EAOC), energy factor (EF) expressed in cycles per kilowatt-hour (kWh), and water consumption expressed in gallons per cycle. (10 CFR 430.23(c))

The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, amended EPCA to establish prescriptive standards for dishwashers, requiring that dishwashers manufactured on or after January 1, 1988, be equipped with an option to dry without heat. (42 U.S.C. 6295(g)(1)) These EPCA amendments also mandated that DOE must conduct two rounds of rulemaking to determine whether the energy conservation standards for dishwashers should be amended. (42 U.S.C. 6295(g)(4)) On May 14, 1991, DOE issued a final rule establishing the first set of performance standards for dishwashers. 56 FR 22250. The final rule required that dishwashers manufactured on or after May 14, 1994, must have a minimum EF of 0.46 cycles per kWh for standard size, and 0.62 cycles per kWh for compact size. *Id.* at 22279; 10 CFR 430.32(f)(1).

The Energy Independence and Security Act of 2007[4] (EISA 2007) further amended EPCA, in relevant part by establishing the following energy conservation standards for residential dishwashers manufactured on or after January 1, 2010: (1) For standard size

[1] The term "conventional cooking products," as used in this notice, refers to residential electric and gas kitchen ovens, ranges, and cooktops (other than microwave ovens).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated as Part A.

[3] All references to EPCA refer to the statute as amended, including through the Energy Independence and Security Act of 2007, Public Law 110–140.

[4] Public Law. 110–140 (enacted Dec. 19, 2007).

dishwashers, a maximum annual energy use of 355 kWh per year, and a maximum water consumption of 6.5 gallons per cycle; and (2) for compact dishwashers, a maximum annual energy use of 260 kWh per year, and a maximum water consumption of 4.5 gallons per cycle. (42 U.S.C. 6295(g)(10)(A); 10 CFR 430.32(f)(2)) The amendments also specify that not later than January 1, 2015, the Secretary shall publish a final rule determining whether to amend the standards for dishwashers manufactured on or after January 1, 2018. (42 U.S.C. 6295(g)(10)(B))

Dehumidifiers

The DOE test procedure for dehumidifiers is found at 10 CFR 430, subpart B, appendix X. The Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA to specify that the U.S. Environmental Protection Agency's (EPA) test criteria used under the ENERGY STAR® [5] program must serve as the basis for the test procedure for dehumidifiers. (EPACT 2005, section 135(b); 42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria require that American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DH–1–2003, "Dehumidifiers," be used to measure energy use and that the Canadian Standards Association (CAN/CSA) standard CAN/CSA–C749–1994 (R2005), "Performance of Dehumidifiers," be used to calculate EF. DOE has adopted these test criteria, along with related definitions and tolerances, as its test procedure for dehumidifiers. 71 FR 71340, 71347, 71366–68 (Dec. 8, 2006). The DOE test procedure provides methods for determining the EF for dehumidifiers, which is expressed in liters (l) of water condensed per kWh.

Section 135(c)(4) of EPACT 2005 added dehumidifiers as products covered under EPCA and established standards effective for dehumidifiers manufactured on or after October 1, 2007. (42 U.S.C. 6295(cc)(1)) Section 311 of EISA 2007 further amended EPCA to revise the energy conservation standards for dehumidifiers, establishing the following minimum EFs based on product capacity for dehumidifiers manufactured on or after October 1, 2012:

TABLE I.1—OCTOBER 2012 DEHUMIDIFIER ENERGY CONSERVATION STANDARDS *

Product capacity (pints/day)	Minimum EF (liters/kWh)
Up to 35.00	1.35
35.01–45.00	1.50
45.01–54.00	1.60
54.01–75.00	1.70
75.00 or more	2.5

* (42 U.S.C. 6295(cc)(2)).

Conventional Cooking Products

DOE's test procedures for conventional ranges, cooktops, and ovens (including microwave ovens) are found at 10 CFR 430, subpart B, appendix I. DOE first established the test procedures included in appendix I in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20108, 20120–28. DOE revised its test procedure for cooking products to more accurately measure their efficiency and energy use, and published the revisions as a final rule in 1997. 62 FR 51976 (Oct. 3, 1997). These test procedure amendments included: (1) A reduction in the annual useful cooking energy; (2) a reduction in the number of self-cleaning oven cycles per year; and (3) incorporation of portions of IEC Standard 705–1988, "Methods for measuring the performance of microwave ovens for household and similar purposes," and Amendment 2–1993 for the testing of microwave ovens. *Id.* The test procedure for conventional cooking products establishes provisions for determining EAOC, cooking efficiency (defined as the ratio of cooking energy output to cooking energy input), and EF (defined as the ratio of annual useful cooking energy output to total annual energy input). (10 CFR 430.23(i); 10 CFR part 430 subpart B, appendix I) These provisions for conventional cooking products are not currently used for compliance with any energy conservation standards (because those standards currently involve design requirements), nor is there an EnergyGuide [6] labeling program for cooking products.

DOE has initiated a separate test procedure rulemaking to address standby mode and off mode power consumption for microwave ovens. This rulemaking was initiated separately in response to comments from interested parties on the advance notice of proposed rulemaking (ANOPR) for an earlier rulemaking concerning energy conservation standards for dishwashers, dehumidifiers, cooking products, and commercial clothes washers published on November 15, 2007 (hereafter referred to as the November 2007 ANOPR) (72 FR 64432), prior to the enactment of EISA 2007. As discussed in the October 2008 test procedure NOPR, interested parties stated generally that DOE should amend the test procedures for all types of cooking products to allow for measurement of standby mode energy use in order to implement a standby power energy conservation standard. 73 FR 62034, 62043–44 (Oct. 17, 2008). However, DOE did not receive any specific data or inputs on standby power consumption in conventional cooking products. Also, at that time, interested parties did not submit any comments regarding DOE addressing new measures of standby mode and off mode energy use in the test procedures or energy conservation standards for the other products that were the subject of the November 2007 ANOPR (*i.e.,* dishwashers and dehumidifiers.) Because DOE agreed with the comments supporting new measures of standby mode and off mode energy use for microwave ovens and the potential for early adoption of an energy conservation standard for microwave ovens addressing standby mode and off mode energy consumption, DOE published a NOPR proposing amendments to just the microwave oven test procedure for standby mode and off mode in the **Federal Register** on October 17, 2008. 73 FR 62134. DOE subsequently published a supplemental notice of proposed rulemaking (SNOPR) in the **Federal Register** on this topic on July 22, 2010. 75 FR 42612. Consequently, DOE is proposing amendments to its cooking products test procedure for only conventional cooking products in today's NOPR.

As with dishwashers, NAECA amended EPCA to establish prescriptive standards for cooking products. The NAECA amendments required gas ranges and ovens with an electrical supply cord manufactured on or after January 1, 1990, not to be equipped with a constant-burning pilot light. (42 U.S.C. 6295(h)(1)) Subsequently, DOE published a final rule in the **Federal Register** on April 8, 2009, amending the energy conservation standard for cooking products to require for products manufactured on or after April 9, 2012, that gas cooking products without an electrical supply cord shall not be equipped with a constant burning pilot light. 74 FR 16040, 16094.

[5] For more information on the ENERGY STAR program, *see: http://www.energystar.gov.*

[6] For more information on the EnergyGuide labeling program, *see: http://www.access.gpo.gov/nara/cfr/waisidx_00/16cfr305_00.html.*

Standby Mode and Off Mode

Section 310 of EISA 2007 amended EPCA to require DOE to amend the test procedures for covered products to address standby mode and off mode energy consumption. Specifically, the amendments also require DOE to integrate standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for that product unless the current test procedures already fully account for such consumption. If integration is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of IEC Standards 62301, "Household electrical appliances—Measurement of standby power," and IEC Standard 62087, "Methods of measurement for the power consumption of audio, video, and related equipment." *Id.* For residential dishwashers, dehumidifiers, and conventional cooking products (and microwave ovens), DOE must prescribe any such amendment to the test procedures by final rule no later than March 31, 2011. (42 U.S.C. 6295(gg)(2)(B)(vi)) Furthermore, EISA 2007 also amended EPCA to direct DOE to incorporate standby mode and off mode energy use into any final rule establishing or revising an energy conservation standard for a covered product adopted after July 1, 2010. If it is not feasible to incorporate standby mode and off mode into a single amended or new standard, then the statute requires DOE to prescribe a separate standard to address standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(3))

DOE notes that the IEC is in the process of developing a revised version of IEC Standard 62301, which was expected to be released by July 2009. This revision is expected to be significantly delayed until late 2010 at the earliest. In order to publish a final rule by March 31, 2011, DOE is proceeding with an amended test procedure based on the current version of IEC Standard 62301 (First Edition). However, DOE is also considering the updated mode of operation definitions in the latest draft version of IEC Standard 62301, IEC Standard 62301 (FDIS). Although not formally adopted, DOE is evaluating the substance of those definitions, which are expected to be included in the final revised IEC Standard 62301 (Second Edition).

DOE acknowledges that the current dishwasher test procedure already includes definitions and testing methods for measuring standby mode power consumption similar to the IEC Standard 62301 (First Edition) provisions, but it does not include definitions and testing methods for measuring multiple standby modes and off mode power consumption. However, in today's NOPR, for the reasons discussed in section III.B, DOE proposes amendments to the current dishwasher test procedure in order to fully account for standby mode and off mode power consumption. These amendments would take into consideration the most current versions of IEC Standards 62301 and 62087.

The current DOE dehumidifier test procedure does not address energy use when the product is in standby mode and off mode. For this reason, in today's NOPR, DOE is proposing amendments to its dehumidifier test procedure to provide for the measurement of standby mode and off mode energy consumption.

The current DOE conventional cooking products test procedure does not fully account for standby mode and off mode energy consumption. However, DOE notes that the test procedures, as currently drafted, do account for standby energy use in narrow cases. The DOE conventional cooking products test procedures include provisions for determining the annual energy consumption of a continuously-operating clock, as well as the standby energy use associated with a continuously-burning pilot light for gas cooking products. Otherwise, the test procedure does not address energy use in standby mode or off mode. For this reason, in today's NOPR, DOE proposes amendments to the conventional cooking products test procedures to fully account for standby mode and off mode power consumption.

II. Summary of the Proposal

In today's NOPR, DOE proposes to amend the test procedures for dishwashers, dehumidifiers, and conventional cooking products in order to:

(1) Provide a foundation for DOE to develop and implement standards that address use of standby mode and off mode power by these products; and

(2) Address the statutory requirement to expand test procedures to incorporate measures of standby mode and off mode power consumption.

In general, DOE proposes to incorporate by reference into the test procedures for these products specific provisions from IEC Standard 62301 (First Edition) regarding test conditions and test procedures for measuring standby mode and off mode power consumption, and to include language that would clarify the application of such provisions. DOE also proposes to incorporate into each test procedure the definitions of "active mode," "standby mode," and "off mode" that are based on the definitions for those terms provided in IEC Standard 62301 (FDIS). Further, DOE proposes to include in each test procedure additional language that would clarify the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power consumption.[7]

As an initial matter, DOE had to analyze a number of product-specific modes in order to determine whether they should be characterized as active mode, standby mode, or off mode functions. As discussed in further detail below, this rulemaking is limited to addressing standby mode and off mode. Based upon the results of its analyses, DOE is proposing the following product-specific amendments to the applicable DOE test procedures. For dishwashers, DOE is proposing definitions for the following different standby modes: (1) A general "inactive" mode; and (2) a "cycle finished" mode. For dehumidifiers, DOE is proposing definitions for the following different standby modes: (1) a general "inactive" mode; (2) an "off-cycle" mode; and (3) a "bucket full/removed" mode. For conventional cooking products, DOE is also proposing definitions for the following different standby modes: (1) A general "inactive" mode; and (2) a "cycle finished" mode. For each product, energy use in each standby mode, as well as energy use in the off mode, would be separately tested under the appropriate procedure and incorporated into an integrated energy efficiency metric for that product.

The current DOE dishwasher test procedure already includes provisions for measuring standby power and includes it in the EAEU and EAOC calculations. However, as discussed earlier, DOE is proposing amendments to the dishwasher test procedure, pursuant to EPCA, to fully and more accurately account for standby mode and off mode power consumption based on provisions in IEC Standard 62301. As a result, DOE is proposing revisions to the EAEU and EAOC calculations to

[7] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedure to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. As explained subsequently in this notice, the narrow scope of this particular IEC standard reduces its relevance to today's proposal.

incorporate the revised measurements of standby mode and off mode power consumption into the combined metrics for dishwashers.

For dehumidifiers, DOE is proposing in today's NOPR to:

(1) Establish a new measure of energy use to calculate the annual standby mode and off mode energy use in dehumidifiers, based on the typical hours dehumidifiers spend in these modes; and

(2) Adopt a new measure of energy efficiency (integrated energy factor (IEF)) that includes energy used in standby, off, and active modes for dehumidifiers.

For conventional cooking products, the current DOE test procedure accounts for energy used by a constant clock display (if present), which is considered as part of standby mode under the proposed definition of "standby mode." The current test procedure also accounts for standby mode energy use of a continuously-burning pilot light for gas conventional cooking products.[8] However, DOE proposes in today's NOPR to amend the test procedure for conventional cooking products to fully account for all additional standby mode and off mode power consumption, as specified by provisions in IEC Standard 62301. DOE proposes in today's NOPR to: (1) Establish a new measure of energy use to calculate the annual standby mode and off mode energy consumption in conventional cooking products, and (2) adopt new measures of energy efficiency (IEF), annual energy consumption, and annual operating cost that include the energy used in all standby mode and off mode operations of conventional cooking products. In addition, DOE proposes additional clarifications to the testing methods for conventional cooking products to define the test duration for cases in which the measured power is not stable (*i.e.,* varies over a cycle). DOE acknowledges that the power consumption of conventional cooking product displays can vary based on the clock time being displayed, so today's proposal is drafted in a way to account for this fact, while still generating representative results.

The statute also has other provisions regarding the inclusion of standby mode and off mode energy use in any energy conservation standard which have bearing on the current test procedure rulemaking. EPCA provides that amendments to the test procedures to include standby mode and off mode energy consumption shall not be used to determine compliance with product standards established prior to the adoption of the amended test procedures. (42 U.S.C. 6295(gg)(2)(C)) However, EPCA requires that DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency or measured energy use of a covered product, DOE must amend the applicable energy conservation standard during the rulemaking carried out with respect to the amended test procedure. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. (42 U.S.C. 6293(e)(2)) Although DOE remains obligated under 42 U.S.C. 6293(e)(1) to conduct an analysis of the impact of the test procedure amendments, amendments to the existing energy conservation standards are not required, because the statute already explicitly provides that the test procedure amendments for standby mode and off mode shall not apply to the energy conservation standards currently in place. The following discussion assesses these anticipated impacts, as well as the pathway for regulated entities to continue to be able to ascertain, certify, and report compliance with the existing standards until such time as amended standards are established which comprehensively address standby mode and off mode energy consumption.

For dishwashers, the current energy conservation standards (10 CFR 430.32(f)) are based on EAEU, which includes a simplified measure of standby mode power consumption. Because today's proposed amendments would revise the calculations for EAEU and EAOC, both of which currently incorporate standby mode power, DOE investigated how the proposed amendments would affect the measured efficiency. As discussed in section III.G, DOE has tentatively determined that the proposed amendments in today's NOPR would not measurably alter the measured efficiency of dishwashers. In addition, the proposed amendments would clarify that the amended calculations for EAEU need not be performed to demonstrate compliance with the existing energy conservation standards until the compliance date of amended energy conservation standards for dishwashers which take into account standby mode and off mode energy use. The proposed amendments would also require that any representations as to standby mode and off mode energy use must use the amended calculations for EAEU and EAOC on or after a date 180 days after publication of the test procedure final rule. The amended test procedure, therefore, would still be able to be used by manufacturers to certify compliance of existing dishwashers with the current energy conservation standards.

The current Federal energy conservation standards for dehumidifiers (10 CFR 430.32(v)), which are based on EF, do not currently account for standby mode or off mode power consumption. DOE proposes to establish a new integrated efficiency metric (integrated annual energy use) to account for standby mode and off mode power consumption. For this reason, the proposed amended test procedure would not alter the existing energy efficiency descriptor and, therefore, would not affect a manufacturer's ability to demonstrate compliance with previously established standards for dehumidifiers.

As noted earlier, the current energy conservation standards for cooking products (10 CFR 430.32(j)) require only that gas cooking products with an electrical supply cord not be equipped with a constant-burning pilot light. The same requirement applies to gas cooking products without an electrical supply cord, beginning on April 9, 2012. There are currently no performance-based Federal energy conservation standards for conventional cooking products (including energy use in standby mode and off mode). Thus, given the design standard currently in place, the proposed test procedure amendments would not alter one's ability to comply with the existing energy conservation standard for cooking products.

These amended test procedures would become effective in terms of adoption into the CFR, 30 days after the test procedure final rule is published in the **Federal Register**. However, DOE is proposing added language to the regulations codified in the CFR that would state that any added procedures and calculations for standby mode and off mode energy consumption resulting from implementation of the relevant provisions of EISA 2007 need not be performed at this time to determine compliance with the current energy conservation standards. Subsequently, manufacturers would be required to use

[8] DOE notes that it published a final rule in the **Federal Register** on April 8, 2009, establishing standards that prohibit continuously-burning pilot lights for gas cooking products manufactured on or after April 9, 2012. 74 FR 16040, 16094.

the amended test procedures' standby mode and off mode provisions to demonstrate compliance with DOE's energy conservation standards on the mandatory compliance date of a final rule establishing amended energy conservation standards for dishwasher, dehumidifier, and conventional cooking products that address standby mode and off mode energy consumption, at which time the limiting statements in the DOE test procedures would be removed. Further clarification would also be provided that as of 180 days after publication of a test procedure final rule, any representations related to the standby mode and off mode energy consumption of these products must be based upon results generated under the applicable provision of these test procedures. (42 U.S.C. 6293(c)(2))

As noted above, pursuant to its statutory mandate under 42 U.S.C. 6295(gg)(2), DOE is only addressing issues related to standby mode and off mode energy use in the current test procedure rulemaking for residential dishwashers, dehumidifiers, and conventional cooking products. For issues that are determined to relate to active mode energy use for any of these products, DOE will consider such amendments in a future test procedure rulemaking under section 302 of EISA 2007. Specifically, under that provision, DOE is required to review test procedures for covered products not later than every 7 years and to determine whether the test procedures accurately and fully comply with the requirement that they produce test results which are representative and not unduly burdensome to conduct. (42 U.S.C. 6293(b)(1))

III. Discussion

A. Products Covered by the Proposed Test Procedure Amendments

Today's proposed amendments to the DOE test procedures cover dishwashers, which DOE defines as follows:

"*Dishwasher* means a cabinet-like appliance which with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means and discharges to the plumbing drainage system." 10 CFR 430.2.

Today's proposed amendments to the DOE test procedures also cover dehumidifiers, which DOE defines as follows:

"*Dehumidifier* means a self-contained, electrically operated, and mechanically refrigerated encased assembly consisting of—

(1) A refrigerated surface (evaporator) that condenses moisture from the atmosphere;

(2) A refrigerating system, including an electric motor;

(3) An air-circulating fan; and

(4) Means for collecting or disposing of the condensate."

Id.

Today's proposed amendments to the DOE test procedures also cover cooking products, specifically conventional cooking products, which are defined as:

"*Cooking products* means consumer products that are used as the major household cooking appliances. They are designed to cook or heat different types of food by one or more of the following sources of heat: Gas, electricity, or microwave energy. Each product may consist of a horizontal cooking top containing one or more surface units and/or one or more heating compartments. They must be one of the following classes: Conventional ranges, conventional cooking tops, conventional ovens, microwave ovens, microwave/conventional ranges and other cooking products."

* * * * *

"*Conventional cooking top* means a class of kitchen ranges and ovens which is a household cooking appliance consisting of a horizontal surface containing one or more surface units which include either a gas flame or electric resistance heating."

"*Conventional oven* means a class of kitchen ranges and ovens which is a household cooking appliance consisting of one or more compartments intended for the cooking or heating of food by means of either a gas flame or electric resistance heating. It does not include portable or countertop ovens which use electric resistance heating for the cooking or heating of food and are designed for an electrical supply of approximately 120 volts."

"*Conventional range* means a class of kitchen ranges and ovens which is a household cooking appliance consisting of a conventional cooking top and one or more conventional ovens."

Id.

DOE is not proposing any amendments to these definitions in today's notice.

B. Incorporation by Reference of IEC Standard 62301 (First Edition) for Measuring Standby Mode and Off Mode Power Consumption

As required by EPCA, as amended by EISA 2007, DOE considered the most current versions of IEC Standard 62301 and IEC Standard 62087 for measuring power consumption in standby mode and off mode when developing today's proposed amendments to the test procedures. (42 U.S.C. 6295(gg)(2)(A)) DOE notes that IEC Standard 62301 includes provisions for measuring standby power in electrical appliances, and, thus, is relevant to this rulemaking. DOE also reviewed IEC Standard 62087, which specifies methods of measuring the power consumption of TV receivers, video cassette recorders (VCRs), set top boxes, audio equipment, and multi-function equipment for consumer use. IEC Standard 62087 does not, however, include methods for measuring the power consumption of electrical appliances such as dishwashers, dehumidifiers, or conventional cooking products. Therefore, DOE has tentatively determined that IEC Standard 62087 is unsuitable to this rulemaking and has not included any of its provisions in today's proposed test procedure amendments.

DOE proposes to incorporate by reference into these test procedures specific clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power. Specifically, two clauses provide test conditions and test procedures for measuring the average standby mode and average off mode power consumption. Section 4 of IEC Standard 62301 (First Edition) specifies test room conditions, supply voltage waveform, and power measurement meter tolerances, thereby ensuring repeatable and precise measurements of standby mode and off mode power consumption. Section 5 of IEC Standard 62301 (First Edition), regarding test procedures, specifies methods for measuring power consumption when it is stable and unstable (*i.e.,* varies over a representative cycle).

Specifically, DOE proposes to incorporate by reference into the DOE test procedures for dishwashers, dehumidifiers, and conventional cooking products the following provisions from IEC Standard 62301 (First Edition):

TABLE I.2—PROVISIONS FROM IEC STANDARD 62301 (FIRST EDITION) PROPOSED TO BE INCORPORATED BY REFERENCE

Section	Paragraph
4. General conditions for measurements	4.2 Test room. 4.4 Supply voltage waveform. 4.5 Power measurement accuracy.
5. Measurements	5.1 General, Note 1. 5.2 Selection and preparation of appliance or equipment. 5.3 Procedure.

DOE notes that the current dishwasher test procedure already includes testing methods for measuring standby power consumption that are very similar to the provisions in IEC Standard 62301 (First Edition). However, DOE also notes that the current dishwasher test procedure does not contain provisions for measuring multiple standby modes or an off mode. EPCA, as amended by EISA 2007, requires DOE to amend its test procedures for all covered products to fully account for and incorporate standby mode and off mode energy consumption, and to consider the most current version of IEC Standard 62301 as it does so. (42 U.S.C. 6295(gg)(2)(A)) As discussed below, DOE proposes to amend the dishwasher test procedure to include new definitions of "standby mode," "off mode," and "active mode" based on the provisions in IEC Standard 62301 (FDIS). DOE also analyzed the current DOE dishwasher test procedure to determine if any other amendments would be necessary. The analysis has led DOE to tentatively conclude that the proposed clauses from IEC Standard 62301 (First Edition) presented earlier would clarify the dishwasher testing procedure, as well as produce representative and repeatable test results.

As discussed in Section I, the current DOE conventional cooking products test procedure does not fully account for standby mode and off mode energy consumption. The test procedure accounts only for the annual energy consumption of a continuously-operating clock, and the standby energy use associated with a continuously-burning pilot light for gas cooking products. Otherwise, this test procedure does not address energy use in standby mode or off mode. For this reason, DOE has tentatively concluded that adopting the clauses from IEC Standard 62301 (First Edition) as proposed would provide for a test procedure that would produce representative and repeatable test results that would fully account for standby mode and off mode energy consumption.

As also discussed in section I, the current DOE dehumidifier test procedure does not contain any provisions for measuring energy use in standby mode or off mode. DOE has tentatively concluded that adopting the clauses from IEC Standard 62301 (First Edition) as proposed would provide for a test procedure that would produce representative and repeatable test results that would fully account for the standby mode and off mode energy consumption of dehumidifiers.

DOE invites comment on whether IEC Standard 62301 (First Edition) can adequately measure standby mode and off mode power consumption for dishwashers, dehumidifiers, and conventional cooking products, and whether these specific provisions should be incorporated into the test procedures.

DOE is aware that the EPCA requirement to consider IEC Standard 62301 in developing amended test procedures to include standby mode and off mode power consumption results in a potential conflict between the EPCA and IEC Standard 62301 (FDIS) definitions of "standby mode." EPCA defines "standby mode" as the condition in which a product is connected to a main power source and offers one or more of the following user-oriented or protective functions: (1) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; and/or (2) to provide continuous functions, including information or status displays (including clocks) or sensor-based functions. (42 U.S.C. 6295(gg)(1)(A)(iii)) However, paragraph 3.1 of the IEC Standard 62301 (First Edition) defines "standby mode" as the "lowest power consumption mode which cannot be switched off (influenced) by the user and that may persist for an indefinite time when an appliance is connected to the main electricity supply and used in accordance with the manufacturer's instructions." Finally, DOE adopted a third definition prior to EISA 2007 for "standby mode" nearly identical to that of IEC Standard 62301 (First Edition) in the dishwasher test procedure, in which "standby mode" "means the lowest power consumption mode which cannot be switched off or influenced by the user and that may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions." (10 CFR part 430, subpart B, appendix C, section 1.14) However, DOE is free to resolve any such conflict, because EISA 2007 specifically grants authority to amend the statutory definitions of "active mode," "off mode," and "standby mode." (42 U.S.C. 6295(gg)(1)(B)) DOE notes that the statute requires consideration of the most current version of IEC Standard 62301, but it does not require its adoption if DOE determines that another definition(s) would be more appropriate.

Although 42 U.S.C. 6295(gg)(2)(A) requires that DOE consider the most current version of IEC Standard 62301, DOE notes that the IEC is developing an updated version of this standard, IEC Standard 62301 (Second Edition). This updated version of IEC Standard 62301 is expected to include definitions of "off mode," "network mode," and "disconnected mode," and it would also revise the current IEC Standard 62301 (First Edition) definition of "standby mode." However, the IEC anticipates that the final version of IEC Standard 62301 (Second Edition) will likely be published only in late 2010 at the earliest. Therefore, for this proposed rule, the second edition is not available for DOE's consideration or incorporation by reference. Thus, IEC Standard 62301 (First Edition) is the "current version" for purposes of 42 U.S.C. 6295(gg)(2)(A).

DOE is aware that there are significant differences between IEC Standard 62301 (First Edition) and IEC Standard 62301 (FDIS), which is the latest draft version of IEC Standard 62301 (Second Edition). For example, IEC Standard 62301 (FDIS) clarifies certain provisions, such as clarifying the definition of "standby mode" and "off mode" to allow for the measurement of multiple standby power modes.

DOE has reviewed IEC Standard 62301 (FDIS) and anticipates that, once finalized, it will ultimately define the

various modes differently than IEC Standard 62301 (First Edition). IEC Standard 62301 (FDIS) incorporates responses to comments from multiple national committees from member countries on several previous draft versions, and thus, DOE believes, it provides the best available mode definitions. Although the revised IEC Standard 62301 (Second Edition) has not yet been officially released, DOE has decided to consider the substance of the new operational mode definitions from the draft version IEC Standard 62301 (FDIS). DOE notes that the mode definitions in IEC Standard 62301 (FDIS) are substantively similar to those in the previous draft version (IEC Standard 62301 (CDV)), which were the subject of extensive comments from interested parties during recent DOE test procedure rulemakings addressing standby mode and off mode energy use in other products (*i.e.,* microwave ovens, clothes dryers, and room air conditioners). In those instances, interested parties indicated general support for adopting the mode definitions provided in IEC Standard 62301 (CDV). Due to the effective equivalence of the mode definitions in IEC Standard 62301 (CDV) and IEC Standard 62301 (FDIS), DOE believes the public comment support expressed for the mode definitions in IEC Standard 62301 (CDV) would extend to those in IEC Standard 62301 (FDIS).

DOE notes that other significant changes in the methodology were first introduced only at the IEC Standard 62301 (FDIS) stage. These changes have not been the subject of significant public comment from interested parties, nor has DOE had the opportunity to conduct a thorough analysis of those provisions. Consequently, the merits of these latest changes have not been fully vetted, as would demonstrate that they are preferable to the existing methodological provisions in the current version of the IEC standard. Thus, DOE is not able to determine whether the updated methodology represents the best available means to measure standby mode and off mode energy use, so DOE has tentatively decided to base the proposed test procedure amendments (other than the mode definitions previously discussed) on the provisions of IEC Standard 62301 (First Edition).

After considering the most current version of IEC Standard 62301 (*i.e.,* the First Edition) and the draft version of IEC Standard 62301 (*i.e.,* FDIS), DOE has tentatively concluded that the definitions of "standby mode," "off mode," and "active mode" provided in IEC Standard 62301 (FDIS) are the most useful, in that they expand upon the EPCA mode definitions and provide additional guidance as to which functions are associated with each mode. Therefore, DOE is proposing definitions of "standby mode," "off mode," and "active mode" based on the definitions provided in IEC Standard 62301 (FDIS). These definitions are discussed in detail immediately below in section III.C.

C. Determination and Classification of Operational Modes

As stated earlier, without further clarification, regulated parties' attempts to reconcile differences between the mode definitions specified by EPCA and IEC Standard 62301 (First Edition) could lead to multiple interpretations. Therefore, DOE is proposing regulatory definitions for these key terms in order to ensure consistent application of the test procedure provisions related to standby mode and off mode. This section first discusses these overarching definitional changes and then follows with a product-specific analysis of different operational modes in order to determine whether they are active mode, standby mode, or off mode functions. DOE's proposed approach is set forth below.

EPCA defines "active mode" as the condition in which an energy-using product:

(1) Is connected to a main power source;

(2) Has been activated; and

(3) Provides one or more main functions.

(42 U.S.C. 6295(gg)(1)(A)(i))

EPCA defines "standby mode" as the condition in which an energy-using product:

(1) Is connected to a main power source; and

(2) Offers one or more of the following user-oriented or protective functions:

(a) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer;

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

(42 U.S.C. 6295(gg)(1)(A)(iii))

This definition of "standby mode" differs from the one provided in IEC Standard 62301 (First Edition) by permitting the inclusion of multiple standby modes.

EPCA defines "off mode" as the condition in which an energy-using product:

(1) Is connected to a main power source; and

(2) Is not providing any standby mode or active mode function.

(42 U.S.C. 6295(gg)(1)(A)(ii))

DOE recognizes that the EPCA definitions for "active mode," "standby mode," and "off mode" were developed to be broadly applicable for many energy-using products. For specific products with multiple functions, these broad definitions could lead to multiple interpretations. Therefore, DOE proposes to amend the test procedures to include definitions for these modes based on the definitions provided in IEC Standard 62301 (FDIS), with added provisions specific to dishwashers, dehumidifiers, and conventional cooking products. DOE's proposed approach is discussed below.

DOE proposes to define "active mode" for dishwashers, dehumidifiers, and conventional cooking products as the condition in which the energy-using product is connected to a mains power source, has been activated, and provides one or more main functions. DOE notes that section 3.8 of IEC Standard 62301 (Second Edition Committee Draft 2) (IEC Standard 62301 (CD2)) provides the additional clarification that "delay start mode is a one off user initiated short duration function that is associated with an active mode." The subsequent IEC Standard 62301 Committee Draft for Vote (IEC Standard 62301 (CDV)) removed this clarification based on a comment from a member committee on IEC Standard 62301 (CD2) that the clarification conflicted with the proposed definition of "standby mode," which would include "activation of * * * active mode by * * * timer." However, in its response to that comment, the IEC reiterated that delay start mode is a one-off function of limited duration, even though it took action to delete the clarification in IEC Standard 62301 (CDV).[9] DOE infers this to mean that delay start mode should, therefore, be considered part of active mode. However, DOE notes that IEC Standard 62301 (FDIS) classifies delay start as a secondary function and not part of active mode. DOE continues to believe, however, that because delay start is of limited duration and is uniquely associated with the initiation of a main function, it should be considered part of active mode. Additional discussion of delay start mode is provided later in this section.

DOE also proposes the following clarifications for the range of main

[9] Compilation of comments on 59/523/CD: IEC 62301 Ed 2.0 "Household electrical appliances—Measurement of standby power" (August 7, 2009) p. 6. IEC Standards are available online at *http://www.iec.ch.*

functions that would be classified as active mode for each product:

Dishwashers—"Active mode" means a mode in which the dishwasher is performing the main function of washing, rinsing, or drying (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means, or is involved in functions necessary for these main functions, such as admitting water into the dishwasher or pumping water out of the dishwasher.

Conventional Cooking Products—"Active mode" means a mode in which a conventional cooking top, conventional oven, or conventional range is performing the main function of cooking, heating, proofing, or holding the cooking load by means of either a gas flame or electric resistance heating.

Dehumidifiers—"Active mode" means a mode in which a dehumidifier is performing the main functions of removing moisture from ambient air by drawing moist air over a refrigerated coil using a fan, circulating air through activation of the fan without activation of the refrigeration system, or defrosting the refrigerant coil.

DOE proposes to define "standby mode" for dishwashers, dehumidifiers, and conventional cooking products as any mode in which the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: [10]

- To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;
- Continuous functions, including information or status displays (including clocks) or sensor-based functions.

DOE proposes the additional clarification that a timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis. As noted in section III.B, this definition of "standby mode" is based on the definitions provided in IEC Standard 62301 (FDIS), and expands upon the EPCA mode definitions to provide additional clarifications as to which functions are associated with each mode.

As noted earlier, the current DOE dishwasher test procedure defines "standby mode" as the lowest power consumption mode that cannot be switched off or influenced by the user and that may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with manufacturer's instructions. That definition is comparable to the definition in IEC Standard 62301 (First Edition). DOE believes that the proposed "standby mode" definition based on IEC Standard 62301 (FDIS) is preferable in that it expands upon the definition in IEC Standard 62301 (First Edition) and provides additional guidance as to what functions are associated with standby mode. For this reason, DOE proposes in today's NOPR to amend the "standby mode" definition in the dishwasher test procedure based on the definition provided in IEC Standard 62301 (FDIS). Furthermore, DOE proposes to redesignate the current DOE definition as a "simplified standby mode" in order to allow manufacturers to continue to use the existing standby mode provisions to determine compliance with the current dishwasher energy conservation standards until such time as these standards are amended to address standby mode and off mode energy use.

DOE proposes to define "inactive mode" for dishwashers, dehumidifiers, and conventional cooking products as a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

The following discussion analyzes various product-specific modes for dishwashers, dehumidifiers, and conventional cooking products to determine whether they would be properly characterized as active mode, standby mode, or off mode functions.

1. Dishwashers

DOE is aware of two additional relevant modes for dishwashers: (1) delay start mode; and (2) cycle finished mode. "Delay start mode" is defined as a mode in which activation of an active mode is facilitated by a timer. "Cycle finished mode" is defined as a mode that provides continuous status display following operation in active mode. As discussed earlier, because delay start mode is not a mode that may persist for an indefinite time, DOE believes that delay start mode would not be considered part of standby mode, but instead would be a form of active mode. DOE is not proposing amendments to the dishwasher test procedure to define "delay start mode" or to measure power consumption in this mode. DOE may consider amendments addressing delay start mode issues in a future dishwasher test procedure rulemaking conducted under the 7-year schedule requirements of the EISA 2007 amendments to EPCA. (42 U.S.C. 6293(b)(1))

Based on the proposed "standby mode" definition, cycle finished mode, a mode that provides a continuous status display and may persist for an indefinite time, would be considered as part of a standby mode. Therefore, DOE proposes in today's NOPR to define cycle finished mode for dishwashers as "a mode which provides continuous status display following operation in active mode." Proposed provisions to measure energy use in delay start mode and cycle finished mode are discussed in section III.E.1.

2. Dehumidifiers

DOE is aware of three additional relevant modes for dehumidifiers: (1) Delay start mode; (2) off-cycle mode; and (3) bucket full/removed mode. The definition for "delay start mode" for dehumidifiers is the same as that for dishwashers. "Off-cycle mode" is defined as a mode in which a dehumidifier has cycled off its main function by humidistat or humidity sensor, does not have its fan or blower operating, and will reactivate the main function according to the humidistat or humidity sensor signal. "Bucket full/removed mode" is defined as a mode in which the dehumidifier has automatically powered off its main function by detecting when the water collection bucket is full or has been removed. For the same reasons discussed earlier for dishwashers, DOE believes that delay start mode would not be considered a standby mode, but instead would be a form of active mode. Therefore, DOE is not proposing amendments to define or to measure power consumption in "delay start mode." DOE may consider amendments addressing delay start mode issues in a future dehumidifier test procedure rulemaking conducted under the 7-year schedule requirements of the EISA 2007 amendments to EPCA. (42 U.S.C. 6293(b)(1))

DOE believes that off-cycle mode and bucket full/removed mode are modes that may persist for an indefinite time and, under the proposed definition, would be considered as part of standby mode. Therefore, DOE proposes amending its dehumidifier test procedure to include definitions of "off-

[10] The actual language for the "standby mode" definition in IEC Standard 62301 (FDIS) describes "* * * user oriented or protective functions which usually persist" rather than "* * * user oriented or protective functions which may persist for an indefinite time." DOE notes, however, that section 5.1 of IEC Standard 62301 (FDIS) states that "a mode is considered to be persistent where the power level is constant or where there are several power levels that occur in a regular sequence for an indefinite period of time." DOE believes that the proposed language, which was originally included in IEC Standard 62301 (CD2), encompasses the possible scenarios foreseen by section 5.1 of IEC Standard 62301 (FDIS) without unnecessary specificity.

cycle mode" and "bucket full/removed mode." Proposed provisions to measure energy use in delay start mode, off-cycle mode, and bucket full/removed mode are discussed in section III.E.2.

3. Conventional Cooking Products

DOE is aware of three additional relevant modes for conventional cooking products: (1) Delay start mode; (2) cycle finished mode; and (3) Sabbath mode. "Delay start mode" and "cycle finished mode" are defined as for dishwashers. "Sabbath mode" is defined as a mode in which the automatic shutoff is overridden to allow for warming of pre-cooked foods during such periods as the Jewish Sabbath. For the same reasons as discussed for dishwashers and dehumidifiers, DOE believes that delay start mode would not be considered a standby mode, but instead would be a form of active mode. Therefore, DOE is not proposing amendments to define or to measure power consumption in "delay start mode." In addition, DOE believes that the Sabbath mode function of warming food would also be considered part of the active mode. Therefore, DOE is not proposing amendments to define or to measure power consumption in "Sabbath mode." DOE may consider amendments addressing delay start mode and Sabbath mode issues in a future cooking products test procedure rulemaking conducted under the 7-year schedule requirements of the EISA 2007 amendments to EPCA. (42 U.S.C. 6293(b)(1))

DOE believes that cycle finished mode is a mode that may persist for an indefinite time and, under the proposed definition, would be considered as part of standby mode. Therefore, DOE proposes to amend its conventional cooking products test procedure to include a definition of "cycle finished mode." Proposed provisions to measure energy use in delay start mode and cycle finished mode are discussed in section III.E.3.

As discussed in section III.B, DOE proposes to amend the test procedures for residential dishwashers, dehumidifiers, and conventional cooking products to define "off mode" as a mode in which the product is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that shows the user only that the product is in the off positions is included within the classification of off mode. As noted in section III.B, this definition of "off mode" is based on the definitions provided in IEC Standard 62301 (FDIS) and is useful in terms of expanding the scope of the EPCA mode definitions to clarify which functions are associated with off mode.

Under the proposed definitions, a dishwasher, dehumidifier, or conventional cooking product equipped with a mechanical on/off switch that can disconnect power to the display and/or control components would be considered as operating in the off mode when the switch is in the "off" position, provided that no other standby mode or active mode functions are energized. An energized light-emitting diode (LED) or other indication that shows the user only that the product is in the off position would be considered part of off mode under the proposed definition, again provided that no other standby mode or active mode functions are energized. However, if any energy is consumed by the appliance in the presence of a one-way remote control, the unit would be considered to be operating in standby mode because the remote control would be used to activate or deactivate other mode(s). Electrical leakage and any energy consumed for electrical noise reduction, which are not specifically categorized as standby power functions, would be indicative of off mode and would be measured by the proposed amended test procedures.

Section 3.7 of IEC Standard 62301 (FDIS) also defines "network mode" as a mode category that includes "any product modes where the energy using product is connected to a mains power source and at least one network function is activated (such as reactivation via network command or network integrity communication) but where the primary function is not active." Section 3.7 of IEC Standard 62301 (FDIS) also provides a note, stating that "[w]here a network function is provided but is not active and/or not connected to a network, then this mode is not applicable. A network function could become active intermittently according to a fixed schedule or in response to a network requirement. A 'network' in this context includes communication between two or more separately independently powered devices or products. A network does not include one or more controls which are dedicated to a single product. Network mode may include one or more standby functions."

DOE acknowledges that in the future, products that are the subject of this rulemaking could incorporate a network mode for either communication with technicians for repair and performance monitoring, or for interaction with the electric grid. At this time, however, DOE is unaware of any data that would enable it to determine appropriate testing procedures and mode definitions for incorporation into test procedures for network mode in dishwashers, dehumidifiers, and conventional cooking products. This makes it extremely difficult to consider evaluation of a networked unit, even in terms of categorizing it as a standby mode or off mode function. In particular, DOE is unaware of methods for appropriately configuring networks or methods for collecting data about the energy use of appropriately configured networks. DOE also has no information as to whether network connection speed or the number and type of network connections affect power consumption for these products. DOE also has no information as to whether wireless network devices in such products would have different levels of power consumption when a device is looking for a connection versus when the network connection is established. DOE is also unaware of how the energy consumption for dishwashers, dehumidifiers, and conventional cooking products in a network environment may be affected by their product design and user interaction, as well as network interaction. These effects would need to be measured both if the network function could become active intermittently according to a fixed schedule or in response to a network requirement. For these reasons, the amendments proposed in today's NOPR do not include provisions for testing network mode energy consumption in dishwashers, dehumidifiers, and conventional cooking products. Provisions for testing power consumption in network mode could be incorporated into the test procedure through future amendments once the appropriate data and testing methodologies become available. DOE welcomes comment on whether dishwashers, dehumidifiers, or conventional cooking products that incorporate a networking function are currently available, and whether definitions and testing procedures for a network mode should be incorporated into the DOE test procedures. DOE also requests comment on appropriate testing methodologies for measuring energy consumption in a network mode for dishwashers, dehumidifiers, and conventional cooking products, and data on the repeatability of those testing methodologies.

DOE also notes that section 3.9 of IEC Standard 62301 (FDIS) provides a definition for "disconnected mode," which is "the state where all connections to mains power sources of

the energy using product are removed or interrupted." IEC Standard 62301 (FDIS) also adds a note that common terms such as "unplugged" or "cut off from mains" also describe this mode and that this mode is not part of off mode, standby mode, or network mode. DOE believes that there would be no energy use in a disconnected mode and agrees that it would not be part of off mode, standby mode, or network mode. Therefore, DOE is not proposing a definition or testing method for disconnected mode in the test procedures for residential dishwashers, dehumidifiers, or conventional cooking products.

D. Specifications for the Test Methods and Measurements for Standby Mode and Off Mode Testing

DOE proposes amending its test procedures to include provisions for measuring the power consumption of dishwashers, dehumidifiers, and conventional cooking products in all standby and off modes. This section first discusses issues relevant to all three types of products subject to this rulemaking, and then, it subsequently addresses issues specific to each product type. As an initial matter, DOE would clarify the provisions it proposes to include in the test procedures to clarify the IEC Standard 62301 (First Edition) methods when used to measure standby mode and off mode energy use in dishwashers, dehumidifiers, and conventional cooking products. These proposed amendments also include provisions for measuring energy use in cycle finished mode for dishwashers, off-cycle mode and bucket full/removed mode for dehumidifiers, and cycle finished mode for conventional cooking products.

For all three products, DOE is proposing a test method based on the provisions from IEC Standard 62301 (First Edition). Paragraph 5.3.1 of IEC Standard 62301 (First Edition) specifies the following test method for products in which the power varies by not more than 5 percent from a maximum level during a period of 5 minutes: (1) Wait at least 5 minutes after selecting the mode to be measured for the product to stabilize; and (2) measure the power consumption at the end of an additional time period of not less than 5 minutes.

IEC Standard 62301 (First Edition), paragraph 5.3.2, contains provisions for measuring average power in cases where the power is not stable (*i.e.,* the measured power varies by more than 5 percent from a maximum level during a period of 5 minutes). Such instances can include, for example, a clock display whose power consumption varies as a function of the time displayed or internal electronic components which are cycled on and off regularly. In such cases, IEC Standard 62301 (First Edition) requires a measurement period of no less than 5 minutes, or, if there is an operating cycle (defined as a regular sequence of power states that occur over several minutes or hours), one or more complete cycles. DOE notes these provisions do not preclude manufacturers from testing products with a longer stabilization period, or a longer measurement period, as long as the power does not vary by more than 5 percent or the stabilization period represents one or more complete cycles. DOE expects results obtained under such conditions would be comparable to those obtained using the minimum allowable stabilization and measurement periods.

DOE is aware that residential dishwashers and conventional cooking products with displays may reduce power consumption by dimming after a period of user inactivity (known as "automatic power-down"). For products whose power consumption in inactive mode varies in this manner during testing, DOE proposes that the test be conducted after the power level has dropped to its lowest level, as discussed in IEC Standard 62301 (First Edition), section 5, paragraph 5.1, Note 1. DOE believes that products with automatic power-down spend more time in this low-power state than in the higher-power state. Thus, the energy consumption at the low-power level is most representative of inactive mode power range.

DOE is aware that IEC Standard 62301 (First Edition) does not provide guidance on how long to wait for the appliance to drop to the lower-power state. DOE tested 14 dishwashers, 13 dehumidifiers, and 41 conventional cooking products and observed that units with an automatic power-down feature persisted in the higher-power state for less than 10 minutes of user inactivity after the display has initially been energized. However, the test sample was small and may not be sufficiently representative. It is possible that some dishwashers, dehumidifiers, and conventional cooking products may remain in the higher-power state for the duration of a 5-minute stabilization period and subsequent 5-minute measurement period, and then drop to the lower-power state that is more representative of inactive mode. In contrast, IEC Standard 62301 (CDV) specifies for each testing method that the product shall be allowed to stabilize for at least 30 minutes prior to a measurement period of not less than 10 minutes. DOE believes this specification would allow sufficient time for all displays that automatically dim or power down after a period of user inactivity to reach the lower-power state prior to measurement. DOE believes that the IEC Standard 62301 (CDV) 30-minute stabilization and 10-minute measurement periods provide a clearer and more consistent testing procedure than the corresponding time periods specified in IEC Standard 62301 (First Edition). Those periods allow for representative measurements to be made among products that may have varying time periods before the power drops to a lower level more representative of standby mode, off mode, or cycle finished mode.

DOE notes that IEC Standard 62301 (FDIS) establishes an overall test period of not less than 15 minutes for products in which power consumption in the mode being tested is not cyclic. Data collected during the first third of the total period are discarded (and, thus, this time could be inferred to be a stabilization period), and data from the remaining two-thirds of the total period are used to determine whether the power is stable. If stability is not achieved, the total period is extended continuously until the stability criteria are achieved, to a maximum of 3 hours. Modes that are known to be non-cyclic and of varying power consumption shall follow this same procedure, but with a total test period not less than 60 minutes. If power consumption in a mode is cyclic, measurements must be conducted with an initial operation period (analogous to a stabilization period) of at least 10 minutes, and the average power measured over at least four complete cycles. The measurement period must be at least 20 minutes. After careful consideration, DOE has tentatively concluded that the specifications provided in IEC Standard 62301 (FDIS) would not produce power consumption measurements as accurate, repeatable, and enforceable as the specifications provided in IEC Standard 62301 (CDV). Therefore, DOE proposes to require that dishwashers, dehumidifiers, and conventional cooking products be allowed to stabilize for at least 30 minutes prior to a power measurement period of not less than 10 minutes. (For the reasons discussed in section III.D.3, DOE is proposing a choice between different methodologies for the specific case in which conventional cooking product energy use in standby mode varies as a function of the time displayed on a clock. In such case, DOE proposes to specify setting the clock to a particular start time at the

end of a 10-minute stabilization period, waiting another 10 minutes for the product again to stabilize, and then measuring standby power over a period of 10 minutes. Alternatively, DOE proposes that manufacturers, at their own discretion, may choose to measure standby power over a 12-hour period that captures all possible variations of power consumption as a function of the time displayed.) Although DOE did not observe any dehumidifiers with displays that automatically powered down, DOE is proposing the 30-minute stabilization and 10-minute power measurement periods for those products as well in order to account for currently available or future models that may have such a feature.

DOE's test procedures are developed to measure representative energy use for the typical consumer and cannot capture all possible consumer actions and appliance usage patterns that might increase energy use. For example, certain products featuring a display power-down may allow consumers to alter the display settings to increase the amount of time in the high-power state, or to make the high-power state permanent. However, DOE believes the typical consumer will not alter the standard or default settings. Therefore, DOE has not proposed additional provisions in today's NOPR to address the possibility of increased energy use as a result of consumers adjusting the display power-down settings or other features. DOE welcomes comment on the suitability of using the default settings in testing standby mode energy consumption. It also welcomes comment on any testing methodologies that can account for consumer actions that might increase energy use, and requests data on the repeatability of those testing methodologies.

The following sections describe the proposed test method that is specific to each of the three products that are the subject of this rulemaking.

1. Dishwashers

DOE proposes that test room ambient temperatures for standby mode and off mode testing be specified for all dishwashers according to section 4, paragraph 4.2 of IEC Standard 62301 (First Edition). The IEC standard specifies a temperature range of 73.4 ± 9 °F. The current DOE test procedure for dishwashers includes a test room ambient air temperature requirement of 75 ± 5 °F. The narrower range of allowable ambient temperature in the DOE test procedure helps ensure consistent and repeatable test results for active mode measurements in which heat losses could affect energy consumption, but energy use in standby mode or off mode are less affected by ambient temperature. Today's proposed test procedure would allow manufacturers of dishwashers to use the more stringent ambient temperature range in the current DOE test procedure if tests of active mode efficiency performance and standby mode and off mode power consumption are conducted simultaneously in the same room on multiple dishwashers. Alternatively, the proposed temperature specifications taken from IEC Standard 62301 (First Edition) would allow a manufacturer that opts to conduct standby mode and off mode testing separately from active mode testing more latitude in maintaining ambient conditions. DOE requests comment on the appropriateness of this proposed modified test room ambient temperature range.

2. Dehumidifiers

DOE proposes that test room ambient temperatures for standby mode and off mode testing be specified for all dehumidifiers according to section 4, paragraph 4.2 of IEC Standard 62301 (First Edition). The IEC standard specifies a temperature range of 73.4 ± 9 °F. The current DOE test procedure for dehumidifiers references the ENERGY STAR test criteria for dehumidifiers. The ENERGY STAR test criteria are based on ANSI/AHAM Standard DH–1–2003, "Dehumidifiers," which specifies a test room ambient temperature of 80 ± 2 °F for testing. Today's proposed test procedure would allow manufacturers of dehumidifiers to conduct active mode efficiency performance testing and standby mode and off mode power consumption testing simultaneously in the same room on multiple dehumidifiers, as long as the temperature requirements for both tests are met. Alternatively, the proposed temperature specifications taken from IEC Standard 62301 (First Edition) would allow a manufacturer that opts to conduct standby mode and off mode testing separately from performance testing to use the ambient temperature requirement of 73.4 ± 9 °F. DOE requests comment on the appropriateness of this proposed modified test room ambient temperature range.

DOE also proposes additional clarifications to the power supply requirements for standby mode and off mode testing for dehumidifiers to require that the power supply frequency be the rated frequency ± 1 percent. The current DOE dehumidifier test procedure requires that the power supply for the active mode test have a supply voltage of 115/230 volts (V) ± 2 percent (depending on the voltage specified on the name plate), and be at the rated frequency (no allowable range is specified for the latter). DOE notes that section 4, paragraph 4.3 of IEC Standard 62301 (First Edition) states that when IEC Standard 62301 is referenced by an external standard, the test voltage and frequency defined by the external standard shall be used. When the test voltage and frequency are not defined by the external standard, IEC Standard 62301 (First Edition) requires that the supply voltage and frequency be 115 V ± 1 percent and 60 Hertz (Hz) ± 1 percent, respectively. Because the current DOE dehumidifier test procedure specifies that the rated frequency be used for testing but does not provide an allowable range, DOE proposes that the range of ± 1 percent specified by IEC Standard 62301 (First Edition) be used for standby mode and off mode testing. DOE requests comments on its proposed amendments related to frequency.

3. Conventional Cooking Products

DOE proposes that test room ambient temperatures for standby mode and off mode testing be specified for all conventional cooking products, including cooktops, ovens, and ranges, according to section 4, paragraph 4.2 of IEC Standard 62301 (First Edition). The IEC standard specifies a temperature range of 73.4 ± 9 °F. The current DOE test procedure for conventional cooking products includes a test room ambient air temperature specification of 77 ± 9 °F. This varies slightly from the range specified by IEC Standard 62301 of 73.4 ± 9 °F. DOE believes that the higher temperatures allowed for active mode energy testing could be representative of ambient temperatures during a cooking process, but that it would be appropriate to maintain lower allowable temperatures for standby mode and off mode power consumption measurements as to be more representative of ambient conditions during those operating modes. The proposed test procedure would allow manufacturers of conventional cooking products to measure active mode performance and standby and off mode power simultaneously in the same room on multiple units, provided that the room ambient temperature falls within the range allowed by both ambient temperature requirements (*i.e.,* any temperature between 68 and 82.4 °F). Alternatively, the proposed temperature specifications from IEC Standard 62301 (First Edition) would allow a manufacturer to conduct standby mode and off mode testing separately from

performance testing within an ambient temperature range of 73.4 ± 9 °F. DOE requests comment on the appropriateness of this proposed modified test room ambient temperature range.

DOE also proposes additional clarifications to the power supply requirements for standby mode and off mode testing for conventional cooking products to require that the power supply frequency be 60 Hz ± 1 percent. The current DOE conventional cooking products test procedure requires that the power supply for the active mode test be 240/120 V ± 2 percent or 208/120 ± 2 percent (for basic models rated only at that rating), but the test procedure does not specify any power supply frequency requirements. As discussed earlier for dehumidifiers, section 4, paragraph 4.3 of IEC Standard 62301 (First Edition) states that when the test voltage and frequency are not defined, the supply voltage and frequency shall be 115 V ± 1 percent and 60 Hz ± 1 percent, respectively. Because the current DOE conventional cooking products test procedure does not specify a power supply frequency, DOE proposes that the 60 Hz ± 1 percent specified by IEC Standard 62301 (First Edition) be used for standby mode and off mode testing. DOE requests comments on its proposed amendments related to frequency.

IEC Standard 62301 (First Edition) is written to provide some flexibility so that the test standard can be used to measure standby mode and off mode power for most household electrical appliances (including conventional cooking products). For that reason, it does not specify closely the test method for measuring the power consumption in cases in which the measured power is not stable. Section 5.3.2 of IEC Standard 62301 (First Edition) states that "[i]f the power varies over a cycle (*i.e.,* a regular sequence of power states that occur over several minutes or hours), the period selected to average power or accumulate energy shall be one or more complete cycles in order to get a representative average value." DOE investigated the possible regular sequences of power states for conventional cooking products in order to propose clarifying language to IEC Standard 62301 (First Edition) that would provide accurate and repeatable test measurements.

DOE's tests of standby power measurement in conventional cooking products indicate that a given unit or model with a clock display may use varying amounts of standby power depending on the clock time being displayed. DOE tested a small number (7) of conventional cooking products from its test sample to determine the amount of variation in power consumption that is possible due to variations in the clock time being displayed. More specifically, DOE tested the products with clock settings of 1:11 and 12:08, which represent the minimum and maximum amount of numerical display segments.[11] Table III.1 shows the test results for the products that showed significant variation in power consumption depending upon the clock's time display. According to DOE tests of conventional cooking products equipped with a 12-hour clock display, standby power use at different times during a 12-hour cycle could vary by as much as 44 percent.

TABLE III.1—CONVENTIONAL COOKING PRODUCT CLOCK TIME VARIATION STANDBY TESTING RESULTS

Product type	Test unit No.	Average power (W)		Percent variation (%)
		1:11 Clock time	12:08 Clock time	
Oven	1	1.06	1.44	26.4
Oven	2	1.05	1.5	30.0
Oven	3	1.25	1.60	21.7
Oven	4	1.06	1.44	26.4
Range	5	2.73	3.69	26.1
Range	6	0.65	1.15	43.8
Range	7	1.29	1.63	21.0

DOE believes that the lack of specificity in IEC Standard 62301 (First Edition) about the test period could produce test results obtained during one time period that are not comparable to those obtained using other time periods. Such results would not necessarily represent the standby power consumption of conventional cooking products during all hours associated with standby mode. In addition, different testing laboratories could take different approaches in selecting cycles for testing. To assess alternatives to the test cycle specified in IEC Standard 62301 (First Edition), DOE investigated alternative time periods and averaging methods for calculating representative standby power use, using data that DOE collected from microwave oven clock displays during its analyses for energy conservation standards for those products. DOE believes that those displays have cyclic variation in power consumption as a function of displayed time comparable to those in conventional cooking products.

For a typical microwave oven display with a 12-hour clock feature, DOE measured average standby power over the full 12-hour period. This measurement provides the most accurate and repeatable results. However, because a 12-hour test could substantially add to manufacturer test burden, DOE sought to identify other, more-abbreviated testing options, all the while keeping the 12-hour test in mind as an appropriate frame of reference in terms of generating representative results. DOE then evaluated a method using 18 different clock display times to produce an average standby power measurement representative of a 12-hour cycle. (This is referred to as the "18-point method.") This method was discussed in appendix 5B of the technical support document (TSD) for the November 2007 ANOPR. When this method is used, the standby power consumption and line voltage are measured as the clock is cycled through all the possible digit combinations (in terms of active elements).[12] A regression

[11] Each clock time was tested three times to confirm that the results were repeatable. The table shows the average power of the three tests.

[12] The term "active elements" refers to the number of display segments energized in a seven-segment clock display for a given time. Different digit combinations associated with different times displayed may have the same number of active elements.

analysis is then performed to quantify the effect of the number of lit elements (by digit) and voltage on power consumption. The results were integrated across the number of minutes that each active element combination was "on" through the course of the 12-hour test period. As noted in chapter 5 of the November 2007 ANOPR TSD, this methodology produced results for average standby power consumption that were within 1 to 2 percent of the 12-hour test results.

DOE also investigated whether a single 10-minute measurement period with a starting clock time of 3:33 would be a reasonable proxy for the 12-hour standby power measurement in the event that power consumption is not stable. DOE's analysis indicates that the proportion of time that each possible number of segments in a 7-segment LED display that are lit over the 10-minute time period from 3:33 to 3:42 is representative of the distribution of lit segments over a 12-hour period with an arbitrary starting time.[13] This suggests that the 10-minute test period starting at 3:33 would produce average standby power measurements comparable to average standby power measured over 12 hours. Table III.2 shows the average standby power measured for 11 units in DOE's microwave oven test sample using the 18-point and 10-minute methodologies as compared to the 12-hour test.

TABLE III.2—COMPARISON OF METHODOLOGIES FOR MEASURING STANDBY POWER IN COOKING PRODUCTS WITH CLOCK DISPLAYS

Test unit	Display type	12-Hour method	18-Point method		10-Minute method	
		Standby watts *	Standby watts*	Percent difference	Standby Watts*	Percent difference
1	LCD	1.567	1.552	−0.99	1.592	1.60
2	LCD	1.571	1.560	−0.70	1.554	−1.08
3	LCD	1.812	1.812	0.03	1.801	−0.61
4	LCD	1.490	1.475	−0.96	1.492	0.17
5	LCD	1.859	1.847	−0.60	1.874	0.84
6	LCD	3.788	3.798	0.26	3.818	0.81
7	LCD	3.641	3.642	0.04	3.606	−0.95
8	LED	1.802	1.796	−0.35	1.797	−0.32
9	LED	1.825	1.820	−0.25	1.816	−0.47
10	LED	3.185	3.177	−0.27	3.290	** 3.28
11	VFD	5.600	5.611	0.20	5.607	0.13

* Standby power measurements are scaled to normalize the supply power to 120.0 volts.
** For this test, the supply power was significantly different than 120.0 volts. Therefore, DOE believes the scaling of the measured standby power and, thus, the percentage differences from the 12-hour standby power measurements are not valid for this test unit.

Within DOE's limited test sample, the average standby power measured over the specified 10-minute test period agrees within ±2 percent of the average standby power measured over 12 hours. Therefore, DOE tentatively concludes that a 10-minute measurement period with a starting time of 3:33 would provide a valid measure of standby energy use for conventional cooking products, with power consumption varying according to the time displayed on the clock. DOE requests comment on the validity and comparability of the various tests examined, as well as which test(s) DOE should adopt for measuring standby mode and off mode energy use.

As a related matter, DOE is aware that certain clock displays enter a higher-power state when one manually sets the time, and then after a prescribed interval, the clock enters a lower-power state (*e.g.,* by dimming the display) that is representative of the power levels that would be associated with the display running without consumer interaction. Therefore, DOE has tentatively concluded that it would be appropriate to provide a second stabilization period after the clock display is set prior to the start of the measurement period. DOE testing of combination microwave ovens, which have similar clock displays as conventional cooking products, suggest that a second stabilization period of 10 minutes would be sufficient to ensure that the clock display has reached its more representative power state after setting the time. This approach would require setting the clock time to 3:23 in order to start the measurement period at 3:33 after the 10-minute second stabilization period. Therefore, DOE has tentatively decided to specify that, for conventional cooking products for which standby power consumption is not stable, the clock display shall be set at 3:23 at the conclusion of the stabilization period specified in section 5.3 of IEC Standard 62301 (First Edition), after which a second 10-minute stabilization period shall be provided, and the subsequent test period shall be 10 minutes. Alternatively, DOE believes that appropriate stabilization may be achieved by requiring only the 10-minute stabilization period after setting the clock time to 3:23. DOE seeks comment on whether this alternative method in which the clock time is set to 3:23 prior to a 10-minute stabilization period, followed by a 10-minute measurement period commencing at 3:33 would be appropriate.

DOE acknowledges, however, that both the 18-point and 10-minute approaches for accelerated standby testing do not exclude the possibility that a product could be programmed to alter its behavior during such a test in order to minimize measured standby power consumption. For example, a conventional cooking product could be programmed to dim or alter its display only during the display times associated with the 18 measurement points or between display times 3:33 and 3:42.

In light of the above, DOE is proposing to provide manufacturers of conventional cooking products the option to conduct either the full 12-hour test, the 10-minute test, or both (with the expectation that any test records will make clear which type of test(s) was (were) performed). If a manufacturer elects to perform both

[13] *See* "10-Minute vs. 12-Hour Analysis.pdf," included as entry No. 2 in the docket for this rulemaking.

tests on a unit, the manufacturer may only use the results from one of the tests (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. For purposes of enforcement testing, DOE reserves the right to use either test or both tests. Given that the 10-minute test, like the 12-hour test, is intended to represent standby mode and off mode energy use and based upon the research data discussed above, DOE proposes to clarify that the test results conducted under the two different tests must be within ± 2 percent of each other; otherwise, DOE will use the 12-hour test to determine compliance. DOE requests comment on its proposed approach requiring results under the 12-hour test and the 10-minute test to be within ± 2 percent of each other and welcomes data which would show that some other range is more appropriate.

DOE notes that the conventional cooking products test procedure is designed to provide an energy efficiency measurement consistent with representative average consumer use of these products, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (*e.g.,* testing with a display of only 3:33 to 3:42). DOE's proposal reflects the statutory requirement, and the Department's longstanding view, that the overall objective of the test procedure is to measure the product's energy consumption during a representative average use cycle or period of use. 42 U.S.C. 6293(b)(3). Further, the test procedure requires specific conditions during testing that are designed to ensure repeatability while avoiding excessive testing burdens. Although certain test conditions specified in the test procedure may deviate from representative use, such deviations are carefully designed and circumscribed in order to attain an overall calculated measurement of the energy consumption during representative use. Thus, it is—and has always been—DOE's view that products should not be designed such that the energy consumption drops during test condition settings in ways that would bias the overall measurement, thereby making it unrepresentative of average consumer use. If a manufacturer incorporates a power-saving mode as part of the appliance's routine operation, DOE's test procedure would produce a representative measure of average consumer use if the unit powered down during the 10-minute test period for the same percentage of time that such powering down would be expected to occur during a typical 12-hour period, and, thus, such operation would be permissible. Although DOE believes that its proposed 10-minute test would be adequate for standby mode and off mode testing purposes, if it becomes aware of product design strategies which render the 10-minute test results unrepresentative, DOE reserves the right to perform a full 12-hour test in the context of enforcement testing. It has been the Department's long-held interpretation that the purpose of the test procedure is to measure representative use. Ultimately, if DOE identifies a broad pattern of behavior which has the effect of circumventing its test procedure provisions, the Department may consider reopening the conventional cooking products test procedure for further rulemaking.

DOE proposes to clarify in the conventional cooking products test procedure codified in 10 CFR 430.23(i)(17) that the energy test procedure is designed to provide a measurement consistent with representative average consumer use of the product, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (*e.g.* specified display times). However, in a proposed rule on certification, compliance, and enforcement published in the **Federal Register** on September 16, 2010, DOE proposed that it would be a prohibited act to either fail to test a covered product in conformance with applicable test procedure requirements or to engage in "deliberate use of controls or features in a covered product or covered equipment to circumvent the requirements of a test procedure and produce test results that are unrepresentative of a product's energy or water consumption if measured pursuant to DOE's required test procedure." 75 FR 56796, 56825 (Sept. 16, 2010) (citing proposed amendments to 10 CFR 429.31(a)(2)). Examples of products exhibiting such behavior are those products that can exhibit operating parameters (*e.g.* display wattage) for any energy using component that are not predictably varying functions of operating conditions or control inputs—such as when a display is automatically dimmed when test conditions or test settings are reached. DOE believes that retention of the ability to conduct enforcement testing using the 12-hour test will deter product designs that would not be representative under the 10-minute test of the DOE test procedure.

DOE seeks comment on the proposed approach above to address products equipped with controls or other features that modify the operation of energy-using components during testing. DOE's proposed approach does not identify specific product characteristics that could render results generated under the test procedure unrepresentative when testing certain products (*e.g.* modification of operation based on display time). Rather, it clarifies the need to address any features that could potentially yield measurements unrepresentative of the product's energy consumption during a representative use cycle.

As discussed in section III.B, the current DOE conventional cooking products test procedure provides testing methods and calculations to account for energy use of a continuously-operating clock. The current test procedure requires that any electrical clock that uses energy continuously be disconnected, except for those that are an integral part of the timing or temperature-controlling circuit of the product. In cases where the continuously-operating clock is an integral part of the timing or temperature-control circuit and cannot be disconnected during the test, the test procedure requires that such clock energy use be subtracted from the oven, cooktop, or range test energy consumption. The test procedure also provides methods for measuring the power consumption of a clock, which is then multiplied by 8,760 hours (total hours per year) to determine the annual clock energy consumption. The annual clock energy consumption is included in the calculation of total annual energy consumption and EF.

DOE believes that the testing provisions for clock energy consumption currently in the cooking products test procedure are no longer necessary because DOE proposes to amend the conventional cooking products test procedure to fully account for standby mode and off mode energy consumption, which include clock energy consumption. DOE proposes to incorporate standby mode and off mode energy consumption into the total annual energy consumption and EF calculations. Therefore, DOE proposes to remove the provisions for clock energy consumption from the conventional cooking products test procedure and to replace them with the provisions for measuring all standby mode and off mode energy consumption. (*See* section III.E.)

E. Calculation of Energy Use Associated With Standby Mode and Off Mode

Measurements of power associated with standby mode and off mode for

dishwashers, dehumidifiers, and conventional cooking products are expressed in watts (W). The annual energy consumption in each of these modes is the product of the power consumption and the time spent in that particular mode per year. The following sections describe how the annual energy use associated with each operating mode is calculated for the products that are the subject of this rulemaking.

1. Dishwashers

Energy use for dishwashers is expressed in terms of average annual energy use and total energy used per dishwasher cycle. (10 CFR 430.23(c)) As discussed in section III.F, DOE has tentatively determined that it is technically feasible to incorporate measures of standby mode and off mode energy use into the overall energy use metric (*i.e.,* average annual energy use) as required by the EISA 2007 amendments to EPCA. (42 U.S.C. 6295(gg)(2)(A)) Therefore, DOE has examined standby mode and off mode energy consumption in terms of annual energy use, expressed in kWh per year.

In the current DOE dishwasher test procedure, the annual standby mode energy consumption is calculated by multiplying the average standby power use by the number of standby hours per year. The number of standby hours per year is equal to the number of total hours per year minus the product of the representative average dishwasher use of 215 cycles per year times the average wash cycle time. The average wash cycle time is derived from test measurements of the duration of the various cycles available on a dishwasher, such as normal, truncated normal, and sensor cycles. The average standby energy consumption is then added to the annual machine energy use (which includes any water heating within the dishwasher) and annual water energy use (energy used by the residence's water heater to heat the water prior to being supplied to the dishwasher during the cycle) to calculate the EAEU. DOE is proposing in today's NOPR that the active mode hours be determined using the approach specified in the current DOE dishwasher test procedure. That procedure uses test measurements of the duration of the various cycles available on a dishwasher to determine its average wash cycle time and then multiplies that average wash cycle time by 215 cycles per year. DOE proposes that the remaining non-active hours be distributed between the appropriate standby and off modes. DOE investigated the annual hours and energy consumption associated with each possible dishwasher operating mode, including inactive, delay start, cycle finished, off, and active modes, in order to propose methods for calculating the total annual energy use.

As part of the November 2007 ANOPR, DOE estimated the length of a dishwasher cycle to be one hour. 72 FR 64432, 64471 (Nov. 15, 2007). The DOE test procedure assumes 215 dishwasher cycles per year. (10 CFR part 430 subpart B, appendix C, section 5.6) Therefore, DOE estimates that 215 hours per year are dedicated to active mode.

Data regarding the amount of time dishwashers spend in the remaining non-active modes is very limited. A study conducted in Australia, "2005 Intrusive Residential Standby Survey Report," surveyed 120 households and provided information regarding delay start for dishwashers. The report stated that about 25 percent of dishwashers were found to have delay start capabilities. Twenty percent of those surveyed who had dishwashers with delay start capabilities indicated they used this function. The study also reported an average power consumption for delay start mode of 3.8 W.[14] DOE notes the study reported data on dishwashers installed in the households at the time of the survey. Thus, the data may not be representative of dishwashers currently on the market. Because this study provided only limited information on consumer usage patterns for a limited number of modes, DOE investigated other sources of consumer usage data for dishwashers regarding the amount of time dishwashers spend in each possible non-active mode.

One IEC report[15] surveyed dishwasher usage patterns in Germany, Italy, and the United Kingdom households. Dishwashers in these households averaged 213 cycles per year, which is close to the value specified by the current DOE dishwasher test procedure of 215 cycles per year. DOE believes the results of this survey are consistent with consumer behavior in the United States. DOE notes that the sample size of this survey was only 79 households. Regarding delay start, called "time delay function" in the survey, data showed 44 percent of dishwashers had a delay start function. Thirty-four percent of the respondents who owned a dishwasher with a delay start function used the function. Respondents who did use delay start used it for 16 percent of all cycles, with an average delay setting of 5.1 hours. If the results for delay start are applied to all dishwashers and cycles, the average delay start per cycle is just under 8 minutes, or 26 hours per year. For cycle finished mode, called "program end" in the survey, data from all households showed the average time after program end and before switching the machine off was 1.1 hours. If results for cycle finished mode are applied to all dishwashers and cycles, the average total cycle finished mode hours is 237 hours per year.

DOE is using data from this IEC survey in its estimates of the energy consumption associated with the different dishwasher modes. Of a total 8,760 hours per year,[16] the hours not associated with active, delay start, or cycle finished mode are allocated to off and inactive modes. To determine the approximate wattages associated with standby modes and off mode, DOE conducted internal testing on 14 dishwashers.[17] Average power levels in watts are multiplied by the estimated number of hours allocated per year to each mode to calculate the annual energy use for each mode. For example, the active mode power and annual energy use were calculated based on 215 cycles per year for a standard-size dishwasher with a minimum standard EF of 0.65. The typical average per-cycle energy use for such a dishwasher is calculated to be 1.54 kWh per cycle. The product of these inputs yields annual energy use in active mode of 331.1 kWh per year. In summary, Table III.3 presents the comparison of the average wattages and annual energy use associated with all dishwasher modes.

[14] "2005 Intrusive Residential Standby Survey Report," Energy Efficient Strategies (February 2006), p. 40.

[15] R. Stamminger, "Stand-by and other lower power modes on dishwashers," *IEC* Report No. 59A/122/INF (March 24, 2006).

[16] DOE used a value of 8760 total hours per year in all of its analyses in today's notice, based on 24 hours/day × 365 days/year. The current dishwasher test procedure includes a value of 8766 hours, which results from 24 hours/day × 365.25 days/year. Although the latter equation is more accurate, DOE has retained the value of 8760 in all its proposed test procedure amendments in today's notice, and notes that the two values vary by a negligible 0.07 percent.

[17] See "Standby and Off Mode Power Measurements," included as entry No. 3 in the docket for this rulemaking.

TABLE III.3—DOE ESTIMATE OF ANNUAL ENERGY USE OF DISHWASHER MODES

Mode	Hours	Typical power *(W)*	Annual energy use *(kWh)*
Active	215	1,540	331.10.
Delay Start	*26	1.91	0.05.
Cycle Finished	237	1.56	0.37.
Off and Inactive	**8,282	0 to 0.69	0 to 5.71.

*Based on IEC 59A/122/INF.
**(8,760 hours per year—215 active mode hours—26 delay start hours—237 cycle finished hours) = 8,282 hours.

As discussed in section III.C, DOE believes that delay start would not be considered part of standby mode, but instead, it would be an active mode. For the reasons discussed earlier, DOE is not proposing amendments to the dishwasher test procedure to define "delay start mode" or to measure power consumption in this mode. The comparison of annual energy consumption of different dishwasher modes presented in Table III.3 shows that energy use associated with delay start mode is relatively insignificant because of the small number of annual hours associated with this mode. In addition, the power levels in this mode are similar to those for off/inactive modes for dishwashers currently on the market. Therefore, DOE proposes to allocate delay start mode hours (which total 26 for this example case) to the inactive and off modes (which would then total 8,308 for this example case). DOE also proposes that 237 hours be associated with cycle finished mode for dishwashers capable of functioning in such a mode, as presented in Table III.3.

To determine the annual hours per mode for dishwashers for which not all standby modes are possible, DOE proposes to reallocate the hours for modes that are not part of the dishwasher's design. For example, if cycle finished mode is not part of a dishwasher's design, the off/inactive mode hours would be the total hours per year minus the active mode hours per year. If cycle finished mode is part of the design, the off/inactive mode hours would be the total hours per year minus the active mode hours per year minus the 237 cycle finished mode hours.

DOE believes that the proposed definition of "off mode" as applied to dishwashers refers to units with mechanical rather than electronic controls, or units with electronic controls combined with a mechanical switch, with which the user can de-energize the electronic controls. Reactivation of the dishwasher with a push-button sensor, touch sensor, or other similar device that consumes power is considered to be a standby mode feature under the proposed definition. The proposed definition states that standby mode facilitates the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer. DOE believes there are few dishwashers with electronic controls that have an additional mechanical on/off switch. Therefore, the combined inactive/off mode hours would most likely be allocated fully either to inactive or off mode, depending on the type of controls present on the dishwasher. DOE does not have market share information to determine how many dishwashers are currently shipped with electromechanical controls or the proportion of time spent in off mode for units equipped with a mechanical on/off switch. For dishwashers with electronic controls plus a mechanical on/off switch, DOE is proposing to allocate half of the non-active hours to inactive and half to off modes. DOE welcomes comment and additional information on this point, and on the proposed approach for calculating energy use for standby mode and off mode.

In conclusion, DOE proposes to determine dishwasher standby mode and off mode energy use by: (1) Calculating the product of wattage and allocated hours for all possible standby and off modes; (2) summing the results; and (3) dividing the sum by 1,000 to convert from watt-hours (Wh) to kWh. DOE invites comments on this proposed methodology and associated factors, including accuracy, allocation of annual hours, and test burden for manufacturers. DOE may also consider adoption in the final rule of the following alternative methodology based on comments received.

The comparison of annual energy use of different dishwasher product modes shows that cycle finished mode represents a relatively small number of hours per year at a low power consumption level. For dishwashers currently on the market, these levels are distinct from but comparable to those for off/inactive modes. Thus, DOE could adopt a test procedure for dishwashers that would specify that only hours spent in off and inactive modes would be considered when calculating energy use associated with standby mode and off mode. In that case, all of the non-active hours would be allocated to the inactive and off modes. DOE invites comment on whether such an alternative would be representative of the standby mode and off mode power consumption of dishwashers currently on the market.

2. Dehumidifiers

Energy use for dehumidifiers is expressed as EF, which is the ratio of liters of water removed from the air per kWh. As discussed in section III.F, DOE has determined it is technically feasible to incorporate measures of standby mode and off mode energy use into the overall energy use metric, and accordingly, DOE is making a proposal consistent with that determination, as required by the EISA 2007 amendments to EPCA. (42 U.S.C. 6295(gg)(2)(A)) Thus, DOE proposes that a dehumidifier's total annual energy use be estimated by combining standby mode and off mode energy consumption with active mode consumption based on the number of hours a dehumidifier spends in each mode.

In order to establish the number of hours per year a dehumidifier spends in different operating modes, DOE investigated studies of dehumidifier usage patterns. Table III.4 shows estimates of monthly dehumidifier usage obtained from a variety of sources, including a 1998 Arthur D. Little (ADL) report,[18] a 2005 Lawrence Berkeley National Laboratory (LBNL) report,[19] and estimates provided by ENERGY

[18] R. Zogg, and D. Alberino, "Electricity Consumption by Small End Uses in Residential Buildings," Arthur D. Little (August 20, 1998).

[19] M. McWhinney, *et al.,* "ENERGY STAR product specification development framework: using data and analysis to make program decisions." *Energy Policy,* 33 (2005) pp. 1613–25.

STAR[20] and AHAM in 2006[21] in consultation with manufacturers and others familiar with the product. Most of these estimates demonstrate heavy dehumidifier usage during the summer months and none between the months of November and March. DOE proposes to use AHAM's mid-level estimate of active mode hours for the purpose of this analysis. The AHAM data were developed based on manufacturer experience. DOE believes, therefore, that the data represent a reasonable assessment of the average usage patterns for dehumidifiers. As shown in Table III.4, AHAM's mid-level estimate of annual hourly operation is 1,095 active mode hours, while other estimates range from 875 to 4,320 active mode hours. For the purposes of this analysis, DOE proposes that 1,095 hours be associated with active mode.

TABLE III.4—ESTIMATES OF ACTIVE MODE OPERATING HOURS FOR DEHUMIDIFIERS

Source	Nov–Mar	Apr	May	June	July	Aug	Sep	Oct	Annual
AHAM-Low	0	0	70	210	245	245	70	35	875
AHAM-Mid	0	14	86	231	288	288	130	58	1,095
AHAM-High	0	37	110	256	329	329	183	73	1,315
ADL	0	0	180	360	360	360	180	180	1,620
ENERGY STAR	0	0	475	475	475	475	475	475	2,851
LBNL-High	1,800	360	360	360	360	360	360	360	4,320

DOE is aware that a dehumidifier may be unplugged for a certain percentage of time, and, therefore, will not be in either standby mode or off mode. DOE does not have data regarding the amount of time a typical dehumidifier is unplugged. However, in its comment on the framework document for the residential dishwasher, dehumidifier, cooking products, and commercial clothes washer energy conservation standards rulemaking, AHAM stated that dehumidifiers are normally used on a regional basis in basements during humid summer hours in northern climates. Reviewing the survey data presented in Table III.4, which show no active mode hours of operation for the months from November to March and minimal active mode hours in April, in the context of AHAM's comment has led DOE to tentatively conclude that dehumidifiers would likely be unplugged during the period from November to March and for half of April (5.5 months). Therefore, DOE estimates the time dehumidifiers spend unplugged as 3,984 hours.

Next, DOE investigated how the remaining 3,681 non-active hours (8,760 − 1,095—3,984) would be allocated to the other operating modes. DOE is not aware of any reliable consumer usage data on the number of hours per year dehumidifiers spend in delay start and bucket full/removed modes. In the absence of such data, DOE estimated the time spent in these modes in the manner described below.

To estimate a representative number of annual hours for bucket full/removed mode, DOE estimated the number of times a dehumidifier bucket would be expected to fill with water and the number of hours the bucket would be expected to remain full before being emptied. As discussed in the November 2007 ANOPR, DOE estimated that the predominant dehumidifier product class, which has 25.01–35 pints per day capacity and operates at the existing energy conservation standard level (EF of 1.35 liters per kWh), would have an annual energy use of about 480 kWh per year. 72 FR 64432, 64473 (Nov. 15, 2007). DOE estimates that such a dehumidifier would remove 648 liters of water from the air per year (480 kWh per year × 1.35 liters per kWh = 648 liters per year). Based on the units in DOE's test sample with a capacity between 25.01–35 pints per day, DOE estimates that the average condensate collection bucket size for this product class would be 18.7 pints, or 8.9 liters.[22] If it is assumed the typical consumer will run a dehumidifier until the bucket is full before emptying it, DOE estimates that dehumidifiers will reach bucket full/removed mode 73 times per year (648 liters of water removed from the air per year/8.9 liter bucket capacity = 73). Thus, the 1095 active mode hours divided by 73 bucket full mode events results in an estimate of 15 hours that the dehumidifier spends in active mode per bucket fill. DOE believes that consumers will not empty the collection bucket more than once per day, so the dehumidifier is likely to remain full an average of 9 hours per bucket-full event (24 hours per day − 15 hours per bucket fill = 9 hours). Based on these assumptions, DOE estimates the number of bucket full/removed annual hours to be 657 hours (73 bucket fills per year × 9 hours bucket remains full before being emptied and replaced).

To determine the number of annual hours associated with delay start mode, DOE surveyed dehumidifier models available on the market. DOE determined that about 19 percent of dehumidifiers have a delay start mode function and that the delay start function can be set for up to 24 hours. DOE estimates that the delay start function will only be used on 50 percent of these 19 percent of dehumidifiers that have the function. DOE also estimates that consumers that do use the delay start function will use it once a day for 10 percent of the 199 dehumidifying days per year. (The dehumidifying days are the 6.5 months of the year during which the dehumidifier may be operated in active mode, as shown in the AHAM's mid-level estimate in Table III.4.) DOE also estimates that consumers will use an average delay setting of 12 hours (which is half of the maximum delay start time available on dehumidifiers.) Based on these assumptions, DOE estimates that the average time a dehumidifier is operating in delay start mode per active mode day is 6.8 minutes, or 23 hours per year.

The estimates of annual hours and energy consumption associated with the active, delay start, and bucket full/removed modes are displayed in Table III.5. To determine the approximate wattages associated with standby modes and off mode, DOE conducted internal testing on 13 dehumidifiers.[23] Average power levels in watts are multiplied by

[20] U.S. Environmental Protection Agency and U.S. Department of Energy, ENERGY STAR, "Savings Calculator—Dehumidifiers (Assumptions) (2006) (Last accessed August 10, 2010). Available online at: *http://www.energystar.gov/index.cfm?c=dehumid.pr_dehumidifiers.*

[21] AHAM, *AHAM Data on Dehumidifiers for Efficiency Standards Rulemaking* (August 23, 2006) (Docket No. EE–2006–STD–0127, Comment Number 17).

[22] *See* "Dehumidifier Bucket Size.pdf," included as entry No. 4 in the docket for this rulemaking

[23] *See* "Standby and Off Mode Power Measurements," included as entry No. 3 in the docket for this rulemaking.

the estimated number of hours allocated per year to each mode to calculate the annual energy use for each mode. For the purpose of this analysis, DOE estimated that the remaining 3,001 annual hours (3,681 non-active mode hours − 23 delay start mode hours − 657 bucket/full removed mode hours = 3,001 hours) would be split between off-cycle mode, inactive mode, and off mode. The split between these three modes is discussed later in this section.

TABLE III.5—DOE ESTIMATE OF ANNUAL ENERGY USE OF DEHUMIDIFIER MODES

Mode	Hours	Typical power (*W*)	Annual energy use (*kWh*)
Active	1,095	493	540.
Delay Start *	23	1.54	0.04.
Bucket Full/Removed **	** 657	1.63	1.07.
Off-Cycle/Inactive/Off	3,001	0 to 1.04	0 to 3.12.

* 19 percent (percentage of dehumidifiers with delay start function) × 50 percent (percentage of machines for which the delay start function is used) × 10 percent (for consumers that use the delay start function, the percentage of dehumidifying days that a consumer will use this function per day) × 12 hours (average programmed duration of delay start period) × 199 days (number of dehumidifying days per year) = 23 hours.
** 73 (bucket fills per year) × 9 hours (hours the bucket remains full before being emptied and replaced) = 657 hours.

As discussed in section III.C, DOE believes that delay start mode would not be considered part of standby mode, but instead would be a form of active mode. Therefore, DOE is not proposing amendments to the dehumidifier test procedure to define "delay start mode" or to measure power consumption in this mode. The comparison of the annual energy consumption of different dehumidifier modes presented in Table III.5 shows that energy use associated with delay start mode is relatively insignificant because dehumidifiers spend only a small number of hours in this mode. In addition, the power levels in delay start mode are similar to those for off/inactive modes for dehumidifiers currently on the market. Therefore, DOE proposes to allocate delay start mode hours (which total 23 hours for this example case) to the off-cycle, inactive, and off modes (which would then total 3,024 hours in this example case).

To determine the annual hours per mode for dehumidifiers for which not all standby modes are possible, DOE estimated values by reallocating the hours associated with various standby modes that are not present using the ratios discussed previously. DOE's logic for this distribution of hours follows.

For example, if bucket full/removed mode is not possible for dehumidifiers with a continuous drain and no condensate collection bucket, off-cycle/inactive/off modes would equal 3,024 off-cycle/inactive/off mode hours + 657 bucket full/removed hours = 3,681 hours. DOE believes the proposed definition of "off mode" as applied to dehumidifiers is similar to that for dishwashers. Off mode, as applied to dehumidifiers, refers to units with mechanical rather than electronic controls, or units with electronic controls combined with a mechanical switch that the user can use to de-energize the electronic controls. DOE observed during testing that dehumidifiers with electronic controls require that a humidity level be set when the unit is powered on; if the room humidity level is above the level set, the unit begins operating in active mode. Therefore, DOE believes that when a dehumidifier with electronic controls is powered on, the majority of the non-active mode hours (*i.e.,* when the relative humidity level in the room is below the dehumidifier humidity set point) would be associated with off-cycle mode. If a dehumidifier is equipped with electronic controls and a push-button sensor to power on the controls, it operates in the inactive mode when the unit is not powered on. DOE believes that a dehumidifier with a remote control can be controlled whenever it is plugged in. Thus, these units do not have an off mode and instead operate in the inactive mode when the unit is not powered on, and operate in off-cycle or active mode when the unit is powered on. However, if a dehumidifier allows the user to switch off remote control operation, it would be capable of off, inactive, and off-cycle modes. DOE does not have consumer usage data on the distribution of annual mode hours for dehumidifiers among the different combinations of off-cycle, inactive, and off modes. DOE proposes that the annual hours be split evenly between the off-cycle, inactive, and off modes depending on which modes are present on the dehumidifier under test. Otherwise, for units which are capable of operating in only off-cycle, inactive, or off mode, DOE proposes that all of the hours be allocated to the appropriate mode. DOE welcomes any data available on this issue.

In summary, DOE proposes to amend the dehumidifier test procedure to determine energy use associated with standby mode and off mode by: (1) Calculating the products of wattage and allocated hours for all possible standby and off modes; (2) summing the results; and (3) dividing the sum by 1,000 to convert from Wh to kWh. DOE invites comments on this proposed methodology for dehumidifiers and associated factors, including accuracy, allocation of annual hours, and test burden. DOE may also consider adoption in the final rule of the following alternative methodology based on comments received.

The comparison of annual energy use of different dehumidifier modes shows that, for dehumidifiers currently on the market, power consumption levels in bucket full/removed mode are distinct from but comparable to those for off-cycle/inactive/off modes. Thus, DOE could adopt an approach for dehumidifiers limited to specifying the hours for only off-cycle, inactive, and off modes when calculating energy use associated with standby mode and off mode. In that case, all of the non-active hours (3,681 hours total), including bucket full/removed mode, would be allocated to the off-cycle, inactive, and off modes. DOE invites comment on whether this alternative would be representative of the standby mode and off mode power consumption of dehumidifiers currently on the market.

3. Conventional Cooking Products

Energy use for conventional cooking products is expressed as EF, which is the ratio of annual cooking energy output to the annual energy input. As discussed in section III.F, DOE has determined it is technically feasible to incorporate measures of standby mode and off mode energy use into the overall energy use metric, and accordingly, DOE is making a proposal consistent with that determination, as required by the EISA 2007 amendments to EPCA. (42 U.S.C. 6295(gg)(2)(A)) In order to incorporate standby mode and off mode power consumption into the overall energy consumption for conventional

cooking products, DOE analyzed data on the usage patterns and power consumption in these modes on an annual basis for each product class of conventional cooking products, as discussed below.

a. Conventional Ovens

DOE investigated the hours and energy consumption associated with each possible operating mode for conventional ovens, including inactive, Sabbath, delay start, cycle finished, off, and active modes.

DOE is unaware of reliable consumer usage data for the number of hours spent in active mode for conventional ovens. To estimate the number of annual active mode hours, DOE reviewed data from the Energy Information Administration (EIA)'s 2005 "Residential Energy Consumption Survey" (RECS).[24] RECS is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units, along with data on energy-related characteristics of the housing units and occupants. RECS provides survey data on the frequency of conventional oven use per week. Based on its analysis of RECS data, DOE estimates that the number of active mode cooking cycles per year is 211. Assuming that a conventional oven active mode cycle is on average 1 hour long, DOE estimates that the number of active mode hours per year for a conventional oven is 211. DOE welcomes information and data on such average cycle times, as well as the number of annual conventional oven usage cycles. For the purposes of this analysis, DOE proposes that 211 hours be associated with active mode and the remaining 8,549 hours of the year be associated with the remaining possible modes, including inactive, delay start, cycle finished, Sabbath, and off mode. RECS also provides consumer usage data on how many conventional ovens are used per household. Based on its analysis of RECS data, DOE estimates that 1.04 conventional ovens are used per household.

Similarly, DOE is not aware of reliable consumer usage data for the number of hours conventional ovens spend in various non-active modes. DOE estimated the time associated with Sabbath mode in conventional ovens based on the percentage of Jewish households in the United States that observe kosher practices at home (the households most likely to use Sabbath mode), the number of annual work-free days, and the number of conventional ovens used per household. DOE believes this represents the population of consumers which uses Sabbath mode features in a conventional oven. DOE estimates the percentage of Jewish consumers observing kosher practices at home to be about 0.54 percent of the total U.S. population, based on data from a 2000–01 population survey by the United Jewish Communities,[25] which reported that 21 percent of 2.9 million Jewish households (which equals 609,000 households) in the United States keep a kosher home, compared to 112,386,298 total households in the United States as of 2008.[26] DOE also estimates 1,584 hours of annual work-free hours, which would comprise the weekly Sabbath and the annual non-working Jewish holidays.[27] Using these estimates as well as the number of ovens per household as determined earlier in this section, DOE estimates that 8.9 hours per year would be associated with Sabbath mode for conventional ovens. The calculation is: 0.54 percent (percent of U.S. households that observe kosher practices) × 1,584 hours (annual work-free hours per year) × 1.04 (conventional ovens per household) = 8.9 hours per year.

DOE also estimated the annual hours associated with delay start mode. DOE analyzed data from a DOE survey of ovens currently available on the market and estimated that 96 percent of conventional ovens are equipped with a delay start function. DOE notes that conventional ovens may offer a delay start function of up to 24 hours. However, DOE is unaware of any reliable usage data for the delay start function. In the absence of data, DOE has estimated that, given the prevalence of delay start-equipped ovens, approximately 50 percent of consumers will use this feature for at least some cooking cycles. DOE further estimates that consumers that use the delay start function will use it for 5 percent of cooking cycles and will program a 12-hour delay start period. (The 12-hour delay is half of the maximum delay start time available on conventional ovens, which is also approximately the time between preparation in the morning and initiating a cooking cycle in the evening.) Applying these estimates to all conventional ovens and cooking cycles (211 cycles per year as determined earlier), DOE estimates that the average time a conventional oven is operating in delay start mode per cycle is 17 minutes, or 61 hours per year.

To estimate the annual time associated with cycle finished mode, DOE assumed that conventional ovens on average remain in cycle finished mode for 5 minutes after every cycle. Calculations based on that assumptions result in an estimate of 18 annual hours associated with cycle finished mode.

The remaining 8,461.1 annual hours not associated with active, Sabbath, delay start, or cycle finished mode are allocated to off and inactive modes (8,760 annual hours − 211 active mode hours − 8.9 Sabbath mode hours − 61 delay start mode hours − 18 cycle finished mode hours). The hours for the relevant modes and estimates of power input and energy use for conventional ovens are summarized in Table III.6. The approximate wattages associated with each mode, other than active mode, were determined from internal testing conducted by DOE on 12 conventional ovens.[28] For active mode, the typical average power level is calculated by dividing the annual energy consumption of a baseline efficiency model electric self-cleaning oven (EF of 0.1099 and annual energy consumption of 171.0 kWh per year) by 211 active hours, which equals 810 W. Electric self-cleaning ovens were determined to be the predominant conventional electric oven product class as part of the November 2007 ANOPR. 72 FR 64432, 64474 (Nov. 15, 2007). Although the hours per mode presented in Table III.6 are estimates based on limited study data, DOE believes the energy patterns illustrated in this table are representative for most conventional ovens.

[24] U.S. Department of Energy-Energy Information Administration, "Residential Energy Consumption Survey," 2005 Public Use Data Files (2005). Available online at: *http://www.eia.doe.gov/emeu/recs/*. It is noted that EIA's 2005 RECS is the latest available version of this survey.

[25] United Jewish Communities, "The National Jewish Population Survey 2000–01—Strength, Challenge and Diversity in the American Jewish Population," (Sept. 2003) (Last accessed August 10, 2010). Available online at: *http://www.jewishfederations.org/local_includes/downloads/4606.pdf*.

[26] U.S. Census Bureau. "2006 American Community Survey 3–Year Estimates. S1101. Households and Families" (2006) (Last accessed August 10, 2010). Information available online at: *http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2008_3YR_G00_S1101&-geo_id=01000US&-ds_name=ACS_2008_3YR_G00_&-_lang=en&-format=&-CONTEXT=st*.

[27] These Jewish holidays included Rosh Hashanah, Yom Kippur, Sukkot, Shemini Atzeret, Simchat Torah, Shavu'ot, and Passover.

[28] *See* "Standby and Off Mode Power Measurements, pdf," included as entry No. 3 in the docket for this rulemaking.

TABLE III.6—ESTIMATE OF ANNUAL ENERGY USE OF CONVENTIONAL OVEN MODES

Mode	Hours	Typical power *(W)*	Annual energy use *(kWh)*
Active	211	810	171.0.
Sabbath	*8.9	7.59	.068.
Delay Start	**61	5.35	0.33.
Cycle Finished	†18	1.75	0.032.
Off/Inactive	8,461.1	0 to 3.80	0 to 32.15.

*1,584 (yearly work-free hours) × 1.04 (conventional ovens per household) × 0.54 percent (percent of U.S. households that observe kosher practices) = 8.9 hours.

**96 percent (percentage of conventional ovens with delay start function) × 50 percent (percentage of machines for which the delay start function is used) × 5 percent (for consumers that use the delay start function, the percentage of cycles that the consumer would use this function) × 12 hours (average programmed duration of delay start period) × 211 (annual cooking cycles) = 61 hours.

†211 (annual cycles) × 5 minutes (estimated cycle finished minutes per cycle) = 18 hours.

As discussed in section III.C, DOE believes delay start mode would not be considered part of standby mode, but instead, it would be a form of active mode. Therefore, DOE is not proposing amendments to the conventional oven test procedure to define delay start mode or to measure power consumption in this mode. The comparison of annual energy consumption of different conventional oven modes shows that energy use associated with delay start mode is relatively insignificant because only a small number of hours are associated with this mode. In addition, the power levels in this mode are similar to those for off/inactive modes for conventional ovens currently on the market. For this reason, DOE proposes to allocate delay start mode hours (which total 61 hours for this example case) to the inactive and off modes (which would then total 8,522.1 hours in this example case.)

As also discussed in section III.C, DOE believes that Sabbath mode would be considered part of the active mode. Therefore, DOE is not proposing amendments to the conventional cooking products test procedure to define "Sabbath mode" or to measure power consumption in this mode. However, the comparison of annual energy consumption shows that energy use associated with Sabbath mode is insignificant because only a small number of hours are associated with this mode. DOE proposes to allocate the Sabbath mode hours (which total 8.9 hours for this example case) to the active mode (which would then total 219.9 hours in this example case.)

To determine the annual hours per mode for conventional ovens for which not all standby modes are possible, DOE estimated values based upon reallocating the hours for modes that are not present using the ratios discussed previously. If cycle finished mode, which is assumed to be a fixed value of 18 hours per year, is not present, the off/inactive mode hours would be 8,760 total hours − 219.9 active mode hours = 8,540.1 hours. If cycle finished mode is possible, the off/inactive mode hours would be 8,760 total hours − 219.9 active mode hours − 18 cycle finished hours = 8,522.1 hours.

DOE believes the proposed definition of "off mode" as applied to conventional ovens refers to units with mechanical rather than electronic controls, or units with electronic controls combined with a mechanical switch, with which the user can de-energize the electronic controls. Reactivating a conventional oven with a push-button sensor, touch sensor, or other similar device that consumes power is considered to be a standby mode feature under the proposed definitions. DOE believes there are few conventional ovens with electronic controls that have an additional mechanical off switch. Therefore, the combined inactive/off mode hours would most likely be allocated fully either to inactive or off mode, depending on the type of controls present on the conventional oven. DOE does not have market share information to determine how many conventional ovens are currently shipped with electromechanical controls. For conventional ovens with electronic controls plus a mechanical off switch, DOE proposes to allocate half of the non-active hours to inactive and half to off modes. DOE welcomes comment and additional information on this point, and on the proposed approach for calculating energy use for standby mode and off mode, including the decision to allocate all non-active mode hours to off and inactive modes.

In summary, DOE proposes to determine conventional oven energy use associated with standby mode and off mode by: (1) Calculating the product of wattage and allocated hours for all possible standby and off modes; (2) summing the results; and (3) dividing the sum by 1,000 to convert from Wh to kWh. DOE invites comments on this proposed methodology and associated factors, including accuracy, allocation of annual hours, and test burden. DOE may also consider adoption in the final rule of the following alternative methodology based on comments received.

The comparison of annual energy use of different conventional oven product modes shows that cycle finished mode represents a relatively small number of hours at a low power consumption level. For conventional ovens currently on the market, these levels are distinct from but comparable to those for off/inactive mode. Thus, DOE could adopt an approach that would be limited to specifying the hours for only off/inactive mode when calculating energy use associated with standby and inactive/off modes. In that case, all of the non-active hours (8,540.1 hours total) would be allocated to the inactive/off mode. DOE invites comment on whether such an alternative would be representative of the standby mode and off mode power consumption of conventional ovens currently on the market.

b. Conventional Cooktops

DOE investigated the hours and energy consumption associated with each possible operating mode for conventional cooktops, including inactive, Sabbath, off, and active modes. DOE did not observe any models capable of delay start mode or cycle finished mode, and, therefore DOE did not consider these modes for the purpose of this analysis.

DOE notes that RECS only provides usage data for conventional ovens and does not provide usage data for conventional cooktops. As discussed earlier, DOE estimated based on the 2005 RECS that there are 211 active mode cooking cycles per year for conventional ovens, resulting in 211 active mode hours per year, and that the

balance of the year (8,549 hours) is the established number of hours associated with Sabbath, cycle finished, and off/inactive modes. DOE believes that conventional cooktops would have similar active mode usage patterns as conventional ovens. Therefore, DOE is proposing to use the same 211 active mode cycles per year and annual active mode hours for conventional cooktops, so the remaining 8,549 hours of the year would be associated with standby mode and off mode. DOE welcomes information and data on such average cycle times, as well as annual conventional cooktop usage. DOE also notes that RECS does not provide usage data on how many conventional cooktops are used per household. As a result, DOE is proposing to estimate that the average household uses one conventional cooktop.

DOE is not aware of reliable consumer usage data for hours spent in different standby and off modes in conventional cooktops. As was done for conventional ovens, DOE estimated the time associated with Sabbath mode in conventional cooktops based on the percentage of Jewish households in the United States that observe kosher practices at home (the households most likely to use Sabbath mode), the number of annual work-free days, and the number of conventional cooktops used per household. As it did for conventional ovens, DOE estimates that about 0.54 percent of U.S. households keep kosher homes and that there are approximately 1,584 annual work-free hours (*i.e.,* the weekly Sabbath and the annual Jewish holidays). Applying these estimates to the number of cooktops per household as estimated earlier in this section, and estimating that, based on the relatively few cooktop models certified as Sabbath-compliant [29] and the greater availability of ovens with a dedicated Sabbath mode that DOE estimates would be used in place of cooktops on the Sabbath at least 75 percent of the time, DOE estimates that 2.1 hours per year would be associated with Sabbath mode for conventional cooktops. The calculation is as follows: 0.54 percent (percent of U.S. households that observe kosher practices) × 1,584 hours (annual work-free hours per year) × 1 (conventional cooktops per household) × 25 percent (percent of times that cooktops would be used on the Sabbath in place of or in addition to using an oven) = 2.1 hours per year.

The remaining 8,546.9 annual hours not associated with active or Sabbath mode are allocated to off and inactive modes (8,760 annual hours − 211 active mode hours − 2.1 Sabbath mode hours). The hours for the relevant modes and estimates of power input and energy are summarized in Table III.7. The approximate wattage associated with off/inactive mode was determined from internal testing conducted by DOE on eight conventional cooktops.[30] For active mode, the typical average power level is calculated by dividing the annual energy consumption of a baseline efficiency model electric smooth cooktop (EF of 0.742 and annual energy consumption of 128.2 kWh per year) by 211 active hours which equals 608 W. Electric smooth cooktops were determined to be the predominant conventional electric cooktop product class as part of the November 2007 ANOPR. (*See* the ANOPR national impacts analysis (NIA) spreadsheet tool for cooktops and ovens on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/cooking_products_anopr_tools.html*). For Sabbath mode, in which the cooktop burners or heating elements must not be turned on, off, or adjusted during the Sabbath period, DOE estimates that the burners will be set at no more than 25 percent of the heating input associated with active mode, due to safety considerations during such long-duration use. Although the hours per mode presented in this table are estimates based on limited study data, DOE believes that energy patterns illustrated in this table are representative for most conventional cooktops, because Sabbath mode hours would be a small percentage of annual hours and the off/inactive power levels are based on DOE test measurements.

TABLE III.7—ESTIMATE OF ANNUAL ENERGY USE OF CONVENTIONAL COOKTOP MODES

Mode	Hours	Typical power *(W)*	Annual energy use *(kWh)*
Active	211	608	128.2.
Sabbath	*2.1	152**	0.33.
Off/Inactive	8,546.9	0 to 3.13	0 to 26.73.

*1,584 (yearly work-free hours) × 1 (conventional cooktops per household) × 0.54 percent (percent of U.S. households that observe kosher practices) × 25 percent (percent of times that cooktops would be used on the Sabbath in place of or in addition to using an oven) = 2.1 hours.
**608 W (power in active mode) × 25 percent (percent of heating input that would be used during the Sabbath).

For the same reasons as discussed for conventional ovens, DOE believes that Sabbath mode would be considered part of the active mode. Therefore, DOE is not proposing amendments to the conventional cooktop test procedure to define "Sabbath mode" or to measure power consumption. However, the comparison of annual energy consumption shows that energy use associated with Sabbath mode is insignificant, because only a small number of hours are associated with this mode. DOE instead proposes to allocate the Sabbath mode hours (which total 2.1 hours for this example case) to the active mode (which would total 213.2 hours in this example case).

As with conventional ovens, DOE believes there are few conventional cooktops with electronic controls that have an additional mechanical off switch. Therefore, DOE proposes that the combined inactive/off mode hours would likely be allocated fully either to inactive or off mode, depending on the type of controls present on the conventional cooktop. For conventional cooktops for which both inactive mode and off mode are present, DOE proposes to allocate half of the non-active hours each to inactive and off modes. DOE welcomes comment and additional information on the proposed approach for calculating energy use for standby and off modes, including the decision to allocate all non-active mode hours to off and inactive modes.

In summary, DOE proposes to determine conventional cooktop energy use associated with standby mode and off mode by: (1) Calculating the product

[29] For information on requirements for Sabbath-compliant cooktops and a list of cooktops certified as Sabbath-compliant, please visit: *http://www.star-k.com/cons-appl.htm.*

[30] *See* "Standby and Off Mode Power Measurements.pdf," included as entry No. 3 in the docket for this rulemaking.

of wattage and allocated hours for all possible standby and off modes; (2) summing the results; and (3) dividing the sum by 1,000 to convert from Wh to kWh. DOE invites comments on this proposed methodology and associated factors, including accuracy, allocation of annual hours, and test burden.

c. Conventional Ranges

DOE investigated the hours and energy consumption associated with each possible operating mode for conventional ovens, including inactive, Sabbath, delay start, cycle finished, off, and active mode.

DOE notes that RECS only provides usage data for conventional ovens and does not provide usage data for conventional ranges. As discussed previously, DOE estimated based on the 2005 RECS that there are 211 active mode cooking cycles per year for conventional ovens, resulting in 211 active mode hours per year. DOE also estimated that a conventional cooktop is in the active mode for 211 hours per year. DOE believes that the annual hours that a conventional range would be in active mode would be the sum of the annual active mode hours for conventional ovens and cooktops, which equals 422 hours. Since a range is essentially a combination of an oven and a cooktop, DOE's rationale is to combine the average values for these two components individually. Therefore, for conventional ranges, DOE proposes to associate 422 hours with active mode, and the remaining 8,338 hours of the year with the other non-active modes. DOE welcomes information and data on such average cycle times, as well as annual conventional range usage. RECS does provide consumer usage data on how many conventional ranges are used per household. Based on its analysis of the 2005 RECS data, DOE estimates that 1.03 conventional ranges are used per household.

DOE is not aware of reliable consumer usage data for hours spent in different standby and off modes for conventional ranges. DOE estimated the time associated with Sabbath mode in conventional ranges based on the percentage of Jewish households in the United States that observe kosher practices at home (the households expected to use Sabbath mode), the number of annual work-free days, and the number of conventional ranges used per household. DOE believes this represents the population of consumers which uses Sabbath mode features in a conventional range. As was determined earlier for conventional ovens, DOE estimates that about 0.54 percent of U.S. households keep kosher homes. As was estimated for conventional ovens, DOE estimates 1,584 annual work-free hours (*i.e.,* the weekly Sabbath and the annual Jewish holidays). Applying these estimates to the number of ranges per household, as estimated earlier in this section, DOE estimates that 8.8 hours per year would be associated with Sabbath mode for conventional ranges. The calculation is as follows: 0.54 percent (percent of U.S. households that observe kosher practices) × 1,584 hours (annual work-free hours per year) × 1.03 (conventional ranges per household) = 8.8 hours per year.

DOE analyzed a DOE survey of ranges currently available on the market and estimated that 79 percent of conventional ranges are equipped with a delay start function.[31] DOE notes that conventional ranges available on the market may offer a delay start function of up to 24 hours. As it did for conventional ovens, DOE estimates this function will be used on only 50 percent of conventional ranges so equipped. DOE also estimates that consumers who use the delay start function will use it for 5 percent of the cooking cycles associated with the oven portion of the range and set it for a 12-hour delay start period. (The 12-hour period is half of the maximum delay start time available on conventional ranges.) Applying these estimates to all conventional ranges and applying DOE's estimate of 211 oven cooking cycles per year, DOE estimates that the average time a conventional range is operating in delay start mode per cycle is 14.2 minutes, or (14.2 minutes × 211 cycles per year) = 50 hours per year.

To estimate the annual time associated with cycle finished mode, DOE assumes that, on average, conventional ranges remain in cycle finished mode for 5 minutes after every cycle, resulting in (5 minutes × 211 cycles per year) = 18 annual hours associated with cycle finished mode.

The remaining 8,261.2 annual hours not associated with active, Sabbath, delay start, or cycle finished mode are allocated to off and inactive modes (8,760 annual hours − 422 active mode hours − 8.8 Sabbath mode hours − 50 delay start mode hours − 18 cycle finished mode hours). The hours for the relevant modes and estimates of power input and energy use are summarized in Table III.8. The approximate wattages associated with each mode, other than active mode, were determined from internal testing conducted by DOE on 21 conventional ranges.[32] For active mode, the typical average power level is based on the sum of the typical power levels for conventional ovens and cooktops, as shown in Table III.6 and Table III.7. While the hours per mode presented in this table are estimates based on limited study data, DOE believes that energy patterns illustrated in Table III.8 are representative for most conventional ranges because Sabbath mode hours would be reasonably a small percentage of annual hours and the non-active power levels are based on DOE test measurements.

TABLE III.8—ESTIMATE OF ANNUAL ENERGY USE OF CONVENTIONAL RANGE MODES

Mode	Hours	Typical power (*W*)	Annual energy use (*kWh*)
Active	422	709	†† 299.2.
Sabbath	* 8.8	3.72	0.033.
Delay Start	** 50	2.95	0.148.
Cycle Finished	† 18	2.52	0.045.
Off/Inactive	8,261.2	0 to 2.68	0 to 22.14.

* 1,584 (yearly work-free hours) × 1.04 (conventional ranges per household) × 0.54 percent (percent of U.S. households that observe kosher practices) = 8.8 hours.

[31] *See* "Range Modes.pdf," included as entry No. 5 in the docket for this rulemaking.

[32] *See* "Standby and Off Mode Power Measurements.pdf," included as entry No. 3 in the docket for this rulemaking.

** 79 percent (percentage of conventional ovens with delay start function) × 50 percent (percentage of machines for which the delay start function is used) × 5 percent (for consumers that use the delay start function, the percentage of cycles that the consumer would use this function) × 12 hours (average programmed duration of delay start period) × 211 (annual oven portion cooking cycles) = 50 hours.
† 211 (annual oven portion cooking cycles) × 5 minutes (estimated cycle finished minutes per cycle) = 18 hours.
†† 171 kWh (annual energy use for conventional ovens) + 128.2 kWh (annual energy use for conventional cooktops) = 299.2 kWh.

As discussed for conventional ovens, DOE believes delay start mode would not be considered part of standby mode, because it is not a mode which may persist indefinitely. Instead, DOE believes delay start mode to be a form of active mode. Therefore, DOE is not proposing amendments to the conventional range test procedure to define "delay start mode" or to measure power consumption in this mode. However, the comparison of annual energy consumption of different conventional oven ranges shows that energy use associated with delay start mode is relatively insignificant because only a small number of hours are associated with this mode. In addition, the power levels in this mode are similar to those for off/inactive modes for conventional ranges currently on the market. For this reason, DOE proposes to allocate delay start mode hours (which total 50 hours for this example case) to the inactive and off modes (which would then total 8,367.5 hours in this example case).

Also, as discussed for conventional ovens, DOE believes that Sabbath mode would be considered part of the active mode for conventional ranges because, in this mode, the automatic shutoff for the oven is overridden to allow for warming of pre-cooked foods during such periods as the Jewish Sabbath. Therefore, DOE is not proposing amendments to the conventional cooking products test procedure to define "Sabbath mode" or to measure power consumption in this mode. However, the comparison of annual energy consumption shows that energy use associated with Sabbath mode is insignificant because only a small number of hours are associated with this mode. DOE instead proposes to allocate the Sabbath mode hours (which total 8.8 hours for this example case) to the active mode hours (which would then total 430.8 hours in this example case.)

To determine the annual hours per mode for conventional ranges for which not all standby modes are possible, DOE estimated values by reallocating the hours for modes that are not present using the allocations discussed previously. If cycle finished mode, which is assumed to be a fixed value of 18 hours per year, is not possible, the off/inactive mode hours would be 8,760 total hours − 430.8 active mode hours = 8,329.2 hours. If cycle finished mode is possible, the off/inactive mode hours would be 8,760 total hours − 430.8 active mode hours − 18 cycle finished hours = 8,311.2 hours.

Also, for the same reasons as discussed for conventional ovens, DOE proposes that, in most cases, the combined inactive/off mode hours would be allocated fully either to inactive or off mode, depending on the type of controls present on the conventional range. However, for conventional ranges for which both inactive mode and off mode are present, DOE proposes to allocate half of the non-active hours to inactive mode and the other half to off mode. DOE welcomes comment and additional information on the proposed approach for calculating energy use for standby mode and off mode, including the decision to allocate all non-active mode hours to off and inactive modes.

In summary, DOE proposes to determine conventional range energy use associated with standby mode and off mode by: (1) Calculating the product of wattage and allocated hours for all possible standby and off modes; (2) summing the results; and (3) dividing the sum by 1,000 to convert from Wh to kWh. DOE invites comments on this proposed methodology and associated factors, including accuracy, allocation of annual hours, and test burden. DOE may also consider adoption in the final rule of the following alternative methodology based on comments received.

The comparison of annual energy use of different conventional range modes shows that cycle finished mode represents a relatively small number of hours at a low power consumption level. For conventional ranges currently on the market, these levels are distinct from but comparable to those for off/inactive mode. Thus, DOE could adopt an approach that would be limited to specifying the hours for only off/inactive mode when calculating energy use associated with standby and inactive/off modes. In that case, all of the non-active hours (8,329.2 hours total) would be allocated to the inactive/off mode. DOE invites comment on whether such an alternative would be representative of the standby mode and off mode power consumption of conventional ranges currently on the market.

F. Measures of Energy Consumption

Under 42 U.S.C. 6295(gg)(2)(A), EPCA directs that when DOE amends its test procedures to include standby mode and off mode energy consumption for a covered product, DOE shall integrate such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that: (i) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or (ii) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure, if technically feasible.

In considering whether it is technically feasible to integrate standby mode and off mode energy use into a combined metric along with active mode energy use, DOE makes a case-by-case determination for the product in question. One general principle which DOE considers in making such determination is whether any mode of energy use would be so large as to overwhelm the other for standard-setting purposes. Although it may be possible to measure energy use in each mode with a substantial degree of precision, in some cases there may be very large differences in energy use in active mode versus standby/off modes, such that the effects of the lesser mode would not be reflected within the precision of the regulatory metric. In such cases, DOE believes that disparities in levels of energy use between the different modes may be so great that a combined metric would not be technically feasible, so a separate metric for standby mode and off mode would be warranted. In contrast, where the standby mode and off mode energy use is of a magnitude that it would materially affect that standard-setting process without overwhelming the effects of differing levels of active mode energy use, a combined metric would be meaningful and will be adopted as required by the EISA 2007 amendments to EPCA.

DOE analyzed whether the existing measures of energy consumption for dishwashers, dehumidifiers, and conventional cooking products can be

combined with standby mode and off mode energy use to form a single metric. DOE's tentative conclusions resulting from this inquiry are presented below.

1. Dishwashers

The DOE test procedure for dishwashers currently incorporates various measures of energy and water consumption. These include per-cycle machine electrical energy consumption, per-cycle energy consumption from drying dishes after termination of the last rinse cycle, per-cycle water consumption, per-cycle water heating energy consumption (for electrically-heated, gas-heated, or oil-heated water), and annual standby energy consumption. (*See* 10 CFR part 430, subpart B, appendix C, sections 5.1, 5.2, 5.4, and 5.6 for details.) The test procedure also provides a calculation for EAEU, EAOC, and EF. The current standards are based on EAEU, which incorporates a simplified measure of standby energy consumption. (10 CFR 430.32(f)(2))

Because the dishwasher test procedure already combines measures of active mode energy consumption and standby mode energy use to derive an overall "energy efficiency measure," DOE believes it is technically feasible to incorporate standby mode and off mode energy consumption into the overall energy efficiency descriptor, which is the EAEU. Furthermore, DOE notes that the analysis of overall energy use for dishwashers presented in section III.E shows that the standby mode and off mode energy use is of a magnitude that it would materially affect that standard-setting process without overwhelming the effects of differing levels of active mode energy use . Therefore, a combined measure of energy efficiency for dishwashers is a meaningful measure. As discussed in section III.B, DOE is proposing amendments to the testing methods to fully account for standby mode and off mode energy consumption for dishwashers. Because it is proposing those amendments, DOE also proposes to amend the calculation of EAEU to incorporate the revised measures of standby mode and off mode energy consumption. The revised EAEU metric would satisfy the EPCA requirement to integrate standby mode and off mode energy consumption into the overall energy consumption metric. (42 U.S.C. 6295(gg)(2)(A))

As noted in section I, EPCA requires that DOE must determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) The current DOE dishwasher test procedure defines "standby mode" as the "lowest power consumption mode which cannot be switched off or influenced by the user * * *" 10 CFR part 430, subpart B, appendix C, section 1.14. DOE is proposing to measure an additional standby mode (*i.e.,* cycle finished mode). However, the proposed amendments would clarify that the provisions related to the new measures of energy consumption in standby mode and off mode would not be required to be used by manufacturers until the compliance date of any amended dishwasher standards addressing standby mode and off mode energy use. Therefore, the proposed amendments to the dishwasher test procedure regarding standby mode and off mode would not alter the measured efficiency of any covered product under the existing test procedure.

As part of the final rule for the DOE dishwasher test procedure published in the **Federal Register** on August 29, 2003, DOE also revised the test procedure to include standby energy use in the EAOC calculation, and DOE notes that this amendment was supported by interested parties. 68 FR 51887, 51892–93. Because the current dishwasher test procedure already incorporates standby energy use in the EAOC, DOE believes that it is technically feasible to incorporate both standby mode and off mode energy use into the EAOC. Therefore, DOE proposes to amend the EAOC calculation to incorporate the revised measures of standby mode and off mode energy consumption.

The current dishwasher test procedure also includes a calculation of EF. EF is expressed in cycles per kWh and equals the inverse of the per-cycle machine electrical energy consumption minus half of the drying energy consumption.[33] DOE notes that the current EF metric does not include standby mode energy use. For the final rule amending the dishwasher test procedure published on August 29, 2003, DOE amended only the EAEU and EAOC calculations to include standby power consumption. DOE did not include standby power consumption in the EF calculation because, as defined in the test procedure, the EF: (1) Represents the amount of energy used during a cycle, and (2) standby power is energy consumed outside the wash cycle of a dishwasher and is, therefore, not a parameter in the EF calculation. 68 FR 51887, 51893. For these same reasons, and because the existing energy conservation standard is based on EAEU, DOE is not proposing changes to the EF calculation to include standby mode and off mode energy consumption. DOE expects that the annual energy use metric would continue to be the basis for energy conservation standards when they are next amended.

The dishwasher test procedure currently provides instructions for rounding EAOC to the nearest dollar per year. 10 CFR 430.23(c)(1). However, no instructions are provided for rounding the final values of EF, EAEU, or water consumption per cycle (the latter two of which are the metrics for the current dishwasher energy conservation standards), nor the contributory measurements and interim calculations. This lack of specificity for rounding may lead to uncertainty in the reported metrics or to discrepancies among test laboratories for the same product, resulting in difficulty for regulated entities to ascertain, certify, and report compliance with the existing standards. Therefore, DOE proposes to add instructions to 10 CFR 430.23(c) requiring that EF be rounded to two decimal places, water consumption be rounded to one decimal place, and EAEU be rounded to the nearest whole kWh/year.

2. Dehumidifiers

The DOE test procedure for dehumidifiers currently only incorporates energy consumption in the form of EF (see 10 CFR part 430, subpart B, appendix X for details). EF, defined as liters of water removed from the air per kWh, is the metric for the current energy conservation standards for dehumidifiers. (10 CFR 430.32(v)) The current DOE test procedure for dehumidifiers does not account for standby mode and off mode energy use.

As directed by EPCA, DOE analyzed whether standby mode and off mode energy consumption could be integrated into the overall energy efficiency metric. (42 U.S.C. 6295(gg)(2)(A)) DOE notes that the analysis of overall energy use for dehumidifiers presented in section III.E indicates the standby mode and off mode energy use is of a magnitude that it would materially affect that standard-setting process without overwhelming the effects of differing levels of active mode energy use. Therefore, a combined measure of energy efficiency for dehumidifiers is a meaningful measure.

DOE proposes to establish the following measure of energy consumption for dehumidifiers. The integrated energy factor (IEF) measure accounts for the product's energy use in

[33] The drying energy consumption for dishwashers is the energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle.

standby mode and off mode, as well as the energy use of the product's main functions. As discussed earlier, the current EF associated with dehumidifiers is calculated based on the liters of water removed from the air per kWh of energy consumed, as measured by a 24-hour test cycle. 10 CFR part 430, subpart B, appendix X, section 4. DOE notes that the calculation of EF represents the liters of water removed from the air per kWh of energy consumed over a given period of time, such as the number of active mode hours per year. If the ratio of the annual standby mode and off mode hours to the annual active mode hours is used to apportion standby mode and off mode power consumption over the active mode test period of one day, it is possible to calculate an IEF that incorporates both the efficiency of water removal from the air and the standby mode and off mode energy consumption. DOE proposes to calculate IEF using the following calculation: (The liters of water removed over the active mode test cycle)/((the active mode energy consumption over the active mode test cycle) + ((the standby mode and off mode annual energy consumption [34] × 24 hours)/(the active mode hours per year))).

Section 3 of the current dehumidifier test procedure provides instructions for rounding EF to two decimal places. Section 3 also states that measurements be recorded at the resolution of the test instrumentation, and that calculations be rounded off to the same number of significant digits as the previous step. 10 CFR part 30, subpart B, appendix X. DOE is proposing to retain these same instructions for EF in section 3.1 of the amended test procedure. DOE is also proposing to round the IEF value in section 5.2 to two decimal places.

3. Conventional Cooking Products

The DOE test procedures for conventional cooking tops, ovens, and ranges currently incorporate various measures of energy consumption. These include test energy consumption, annual cooking energy consumption, annual energy consumption of any continuously-burning pilot lights, annual self-cleaning energy consumption, annual clock energy consumption, total annual energy consumption, and cooking efficiency. (See 10 CFR part 430, subpart B, appendix I for details.) The test procedure also provides a calculation for EF [35] and EAOC. Although there are no current energy conservation standards based on performance for conventional cooking products (*see* 10 CFR 430.32(j)), historically, DOE's rulemaking analyses when considering standards have used EF as the energy conservation metric for conventional cooking products.

DOE notes that the conventional cooking products test procedure currently combines measures of energy consumption and narrow forms of standby energy use, including continuously-operating clock and gas standing pilot light energy consumption, to derive an overall "energy efficiency measure." Therefore, a combined measure of energy efficiency for conventional cooking products has already been demonstrated to be a workable and meaningful measure. For this reason, DOE believes that it would be technically feasible to incorporate standby mode and off mode energy consumption into the overall energy efficiency descriptor (*i.e.,* EF). Because DOE is proposing amendments to fully account for standby mode and off mode energy consumption for conventional cooking products, DOE proposes a combined metric addressing active, standby, and off modes for conventional cooking products, as explained in further detail below.

DOE proposes to establish the following measures of energy consumption for conventional ovens. The measures integrate the product's energy use in standby mode and off mode with energy use during main functions of the products. For conventional electric ovens, the "integrated annual energy consumption" will be defined as the sum of the annual standby mode and off mode energy consumption, annual primary cooking energy consumption, and annual primary self-cleaning energy consumption, expressed in kWh. For conventional gas ovens that use electrical energy, the "integrated annual electrical energy consumption" will be defined as the sum of the annual standby mode and off mode energy consumption, annual secondary cooking energy consumption,[36] and annual secondary self-cleaning energy consumption, expressed in kWh. For conventional electric ovens, IEF will be defined as the (annual useful cooking energy output)/(integrated annual energy consumption). For conventional gas ovens, IEF will be defined as the (annual useful cooking energy output)/(annual gas energy consumption + integrated annual electrical energy consumption). DOE also proposes to include similar integrated annual energy consumption and IEF metrics for section 4.1.2.6 of the cooking products test procedure regarding multiple conventional ovens (*i.e.,* cooking appliances that include more than one conventional oven).

DOE proposes to establish the following measures of energy consumption for conventional cooktops. The measures integrate the product's energy use in standby mode and off mode with energy use during the main functions of the products. For conventional electric cooktops, the "integrated annual energy consumption" will be defined as the (annual standby mode and off mode energy consumption) + (annual useful cooking energy output/conventional cooktop cooking efficiency), expressed in kWh. For conventional gas cooktops, the "integrated annual electrical energy consumption" will be defined as the sum of the annual standby mode and off mode energy consumption, annual energy consumption for cooking, and annual energy consumption of the gas standing pilot light, expressed in kWh. For conventional electric cooktops, IEF will be defined as the annual useful cooking energy output divided by the electric cooktop integrated annual energy consumption. For conventional gas cooktops, IEF will be defined as the annual useful cooking energy output divided by the gas cooktop integrated annual energy consumption.

DOE proposes to establish the following measures of energy consumption for conventional kitchen ranges (*i.e.,* a cooktop and oven combined). The measures integrate the product's energy use in standby mode and off mode with energy use during the main functions of the products. "Integrated annual energy consumption" shall be the sum of the annual cooking energy consumption of each of its components plus the conventional range annual standby mode and off mode energy consumption.[37] The IEF of a

[34] The standby mode and off mode annual energy consumption is equivalent to the average standby mode and off mode power multiplied by the number of standby mode and off mode hours per year.

[35] "Energy factor" is defined as the ratio of the annual useful energy output to the total annual energy input.

[36] "Secondary cooking energy consumption" includes any electrical energy consumption of a conventional gas cooking product during active mode operation.

[37] DOE proposes to measure the standby mode and off mode energy consumption for a conventional range as a single product and to add the standby mode and off mode energy consumption separately in the calculation of the integrated annual energy consumption. It proposes this so that the standby mode and off mode power consumption is not measured separately for each component (*i.e.,* cooktop and oven) and then summed with the cooking annual energy consumption, which would effectively double

Continued

kitchen range shall be the sum of the annual useful cooking energy output of each component divided by the sum of the integrated annual energy consumption of each component.

DOE is also proposing to amend the estimated annual energy cost calculations in 10 CFR 430.23(i) to include the cost of energy consumed in standby mode and off mode for conventional cooking products because, as noted above, the current cooking products test procedure already incorporates measures of narrow forms of standby energy use in the EAOC. Thus, DOE believes that it is technically feasible to incorporate both standby mode and off mode energy use into the EAOC and proposes to amend the EAOC calculations to incorporate the revised measures of standby mode and off mode energy consumption, thereby more accurately representing the unit's EAOC.

The cooking products test procedure currently provides instructions for rounding EAOC to the nearest dollar per year, and the cooking efficiency and energy factor to three significant digits. 10 CFR 430.23(i)(1), (2), (4). DOE proposes to amend the test procedure to provide similar instructions requiring that EAOC based on total integrated annual electrical energy consumption be rounded to the nearest dollar per year and IEF to three significant digits.

G. Compliance With Other EPCA Requirements

1. Test Burden

As noted previously, under 42 U.S.C. 6293(b)(3), EPCA requires that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct." For the reasons that follow, DOE has tentatively concluded that amending the relevant DOE test procedures to incorporate clauses regarding test conditions and methods found in IEC Standard 62301 (First Edition), along with the proposed modifications, would produce the required test results and would not result in any undue burdens.

The proposed amendments to the DOE test procedures incorporate a test standard that is accepted internationally for measuring power consumption in standby mode and off mode. Based on its analysis of IEC Standard 62301 (First Edition), IEC Standard 62301 (CDV), and IEC Standard 62301 (FDIS), DOE has determined that the proposed amendments to the residential dishwashers, dehumidifiers, and conventional cooking products test procedures will produce standby mode and off mode average power consumption measurements that are representative of an average use cycle. These measures will be representative both when the measured power is stable and when it is unstable (*i.e.,* when the measured power varies by 5 percent or more during the proposed 30-minute stabilization period.) Also, the test methods and equipment that the amendments would require for measuring standby mode and off mode power in these products are not substantially different from the test methods and equipment required in the current DOE tests. Thus, the proposed test procedure amendments would not require manufacturers to make significant investments in test facilities and new equipment. Therefore, DOE has tentatively concluded that the amended test procedures would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedure would not be unduly burdensome to conduct.

2. Potential Incorporation of IEC Standard 62087

Under 42 U.S.C. 6295(gg)(2)(A), EPCA directs DOE to consider IEC Standard 62087 when amending test procedures to include standby mode and off mode power measurements. As discussed in section III.C of this notice, DOE reviewed IEC Standard 62087, "Methods of measurement for the power consumption of audio, video, and related equipment" (Second Edition 2008–09), and has tentatively determined that it would not be applicable to measuring power consumption of electrical appliances such as dishwashers, dehumidifiers, and conventional cooking products. Therefore, DOE has tentatively concluded that referencing IEC Standard 62087 is not necessary for the proposed amendments to the test procedures that are the subject of this rulemaking.

3. Integration of Standby Mode and Off Mode Energy Consumption Into the Efficiency Metrics

Under 42 U.S.C. 6295(gg)(2)(A), EPCA requires that standby mode and off mode energy consumption be "integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product" unless the current test procedures already fully account for the standby mode and off mode energy consumption or if such an integrated test procedure is technically infeasible. For dishwashers, DOE proposes to incorporate the standby mode and off mode energy consumption into the test procedure's calculation of "estimated annual energy use" and "estimated annual operating cost," as discussed in section III.F. For dehumidifiers, DOE proposes to incorporate the standby mode and off mode energy consumption into an IEF metric, as discussed in section III.F. For conventional cooking products, DOE proposes to incorporate the standby mode and off mode energy consumption into an "integrated annual energy consumption," an IEF, and "estimated annual operating cost," as discussed in section III.F of this notice.

EPCA further provides that test procedure amendments adopted to comply with the new statutory requirements for standby mode and off mode energy consumption shall not be used to determine compliance with previously established standards. (42 U.S.C. 6295(gg)(2)(C)) Under this provision, the test procedure amendments pertaining to standby mode and off mode energy consumption that DOE proposes to adopt in this rulemaking would not apply to, and would have no impact on, existing standards.

Even though 42 U.S.C. 6295(gg)(2)(C) clearly states that the test procedure amendments for measurement of standby mode and off mode energy consumption shall not apply to existing standards, DOE must nonetheless determine the effect of such test procedure amendments on measured energy efficiency, measured energy use, or measured water use of any covered product, pursuant to 42 U.S.C. 6293(e)(1). This analysis is provided below. However, no amendments to the energy conservation standards will be required pursuant to 42 U.S.C. 6293(e)(2), because such test procedure amendments will not impact the existing energy conservation standards until the compliance date of a subsequent final rule that amends the standard to comprehensively address standby mode and off mode energy consumption.

For dishwashers, the current energy conservation standards are based on EAEU, which includes standby mode power consumption. Because today's proposed amendments would revise the calculations for EAEU and EAOC, both of which currently incorporate standby mode power to a limited extent, DOE investigated how the proposed amendments would affect the product's

count the contribution of standby mode and off mode energy consumption.

measured efficiency. DOE believes the proposed changes to the dishwasher testing methods for measuring standby mode and off mode energy consumption do not vary significantly from the methods currently in the DOE test procedure for measuring standby power and would not alter the measured efficiency. DOE also believes that the proposed revision to the definition of "standby mode" would be unlikely to significantly affect the measured efficiency. Therefore, DOE believes that the proposed amendments to the dishwasher test procedure would not alter the measured efficiency. In addition, because the proposed amendments would clarify that manufacturers would not be required to use the provisions relating to standby mode and off mode energy use in the EAEU to determine compliance with the energy conservation standard until the compliance date of new dishwasher standard addressing standby mode and off mode energy use, the proposed test procedure amendments would not affect a manufacturer's ability to demonstrate compliance with previously established standards for dishwashers.

For dehumidifiers, existing energy conservation standards are based on EF, which would not be altered by the proposed test procedure amendments. In addition, DOE notes that the new combined measure of energy consumption (*i.e.,* the integrated energy factor) which it is proposing would not affect the existing standard. However, the test procedure's amended provisions for standby mode and off mode would be a requirement for demonstrating compliance with DOE's energy conservation standards upon the effective date of a subsequent standards rulemaking for dehumidifiers that accounts for standby mode and off mode power consumption. Thus, the proposed test procedure amendments for dehumidifiers comply with these EPCA requirements.

The current energy conservation standards for conventional cooking products are prescriptive standards which ban standing pilot lights. There are no current performance-based Federal energy conservation standards for conventional cooking products (including energy use in standby mode and off mode). Even so, the new combined measure of energy consumption (*i.e.,* the integrated annual energy consumption) which DOE is proposing would not affect the existing annual energy consumption or EF metrics. The cooking products test procedure's amended provisions for standby mode and off mode would be a requirement for demonstrating compliance with any new performance-based energy conservation standards upon the effective date of a subsequent standards rulemaking for conventional cooking products that accounts for standby mode and off mode power consumption. Thus, the proposed test procedure amendments for cooking products would not impact a manufacturer's ability to certify compliance with existing requirements and, accordingly, comply with these EPCA requirements.

H. Impact of the Proposed Amendments on EnergyGuide and ENERGY STAR

DOE considered potential impacts of the proposed test procedure amendments to the Federal Trade Commission (FTC) EnergyGuide requirements and to the U.S. Environmental Protection Agency (EPA)/DOE ENERGY STAR voluntary labeling program and determined that there will be no impact. For dishwashers, the primary indication of energy use provided in the EnergyGuide label is EAEU and EAOC. In addition, the ENERGY STAR program for dishwashers is based on the EAEU and water consumption. As discussed in section III.G, DOE has clarified that the proposed amended calculations for dishwasher EAEU and EAOC shall be used for purposes other than demonstrating compliance with existing energy conservation standards, including the EnergyGuide and ENERGY STAR programs. Because, as also discussed in section III.G, the changes in EAEU and EAOC due to the proposed amendments are expected to be insignificant, DOE believes that there will be no measurable impact on these programs. For dehumidifiers, there are currently no FTC EnergyGuide labeling requirements, and the ENERGY STAR program is based on EF, which will not be changed by the proposed amendments. For conventional cooking products, there is currently no FTC EnergyGuide labeling requirement or ENERGY STAR voluntary labeling program.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's proposed rule action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (*http://www.gc.doe.gov*).

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule would prescribe test procedure amendments that would be used to determine compliance with energy conservation standards for the products that are the subject of this rulemaking.

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (NAICS) that are available at: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* The threshold number for NAICS classification code 335228, titled "Other Major Household Appliance Manufacturing," is 500 employees; this classification specifically includes residential dishwasher manufacturers. Additionally, the threshold number for NAICS classification code 335211, titled "Electric Housewares and Household Fan Manufacturing," is 750 employees; this classification specifically includes manufacturers of residential dehumidifiers. Finally, the threshold number for NAICS classification code 335221, titled "Household Cooking Appliance Manufacturing," is 750 employees; this classification specifically includes manufacturers of residential conventional cooking products.

Most of the manufacturers supplying residential dishwashers, dehumidifiers,

and/or conventional cooking products are large multinational corporations. DOE surveyed the AHAM member directory to identify manufacturers of residential dishwashers, dehumidifiers, and conventional cooking products. DOE then consulted publicly-available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a "small business manufacturing facility" and have their manufacturing facilities located within the United States. Based on this analysis, DOE estimates that there are two small businesses that manufacture conventional cooking products and no small businesses that manufacture dishwashers or dehumidifiers.

For the reasons stated in the preamble, DOE has tentatively concluded that the proposed rule would not have a significant impact on either small or large manufacturers under the applicable provisions of the Regulatory Flexibility Act. The proposed rule would amend DOE's test procedures for dishwashers, dehumidifiers, and conventional cooking products by incorporating testing provisions to address standby mode and off mode energy consumption that will be used to develop and test compliance with future energy conservation standards. The test procedure amendments involve measuring power input when the dishwasher, dehumidifier, or conventional cooking product is in standby mode and off mode. These tests can be conducted in the same facilities used for the current energy testing of these products, but could also be conducted in separate facilities consisting of little more than temperature-controlled space, so there would be no additional facilities costs required by the proposed rule. In addition, while the power meter required for these tests might require greater accuracy than the power meter used for current energy testing, the investment required for a possible instrumentation upgrade would likely be relatively modest. It is possible that the manufacturers, or their testing facilities, already have equipment that meets the requirements of IEC Standard 62301, but an Internet search of equipment that specifically meets the requirements of IEC Standard 62301 reveals a cost of approximately $2,700 to $3,000. This cost is small compared to the overall financial investment needed to undertake the business enterprise of testing consumer products which involves facilities, qualified staff, and specialized equipment.

Furthermore, the duration of the standby mode and off mode testing is generally not expected to exceed the time required to conduct current energy testing. The requirements for equipment and time necessary to conduct the additional proposed tests are not expected to impose a significant economic burden on entities subject to the applicable testing requirements.

For these reasons, DOE tentatively concludes and certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under Control Number 1910–1400. Public reporting burden for compliance reporting for energy and water conservation standards is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to DOE (*see* **ADDRESSES**) and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this rulemaking, DOE proposes test procedure amendments that it expects would be used to develop and implement future energy conservation standards for residential dishwashers, dehumidifiers, and conventional cooking products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures for these products without changing their environmental effects, and, therefore, it is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5, which applies because this rule would establish revisions to existing test procedures that would not affect the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE has examined this proposed rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based upon criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write

regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation clearly specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://www.gc.doe.gov.*) Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), DOE has determined that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554; 44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed regulatory action to amend the test procedures for residential dishwashers, dehumidifiers, and conventional cooking products to address standby mode and off mode energy use is not a significant regulatory action under Executive Order 12866 or any successor order. It would not have a significant adverse effect on the supply, distribution, or use of energy. Moreover, it has not been designated by the Administrator of OIRA as a significant energy action. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA). (15 U.S.C. 788) Section 32 essentially provides that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed modifications to test procedures addressed by this proposed rule incorporate testing methods contained in the commercial standard, IEC Standard 62301 "Household electrical appliances—Measurement of standby power." DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in this standard before prescribing a final rule.

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. A court reporter will be present to record the proceedings and prepare a transcript.

The public meeting will be conducted in an informal, conference style. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on each specific topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others.

Participants should be prepared to answer DOE's and other participants' questions. DOE representatives may also ask participants about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of these procedures that may be needed for the proper conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the transcript will be posted on the DOE Web site and will also be available for purchase from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed paper original. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document that includes all of the information believed to be confidential, and one copy of the document with that information deleted. DOE will make its own determination as to the confidential status of the information and treat it accordingly.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. *Incorporation of IEC Standard 62301 (First Edition).* DOE invites comment on the adequacy of IEC Standard 62301 (First Edition) to measure standby mode and off mode power consumption for residential dishwashers, dehumidifiers, and conventional cooking products, and the suitability of incorporating into DOE regulations the following specific provisions from IEC Standard 62301 (First Edition): section 4 ("General conditions for measurements"), paragraph 4.2, "Test room," paragraph 4.4, "Supply voltage waveform," and paragraph 4.5, "Power measurement accuracy," and section 5 ("Measurements"), paragraph 5.1, "General," and paragraph 5.3, "Procedure." (*See* section III.B)

2. *Mode definitions.* DOE welcomes comment on the proposed definitions of

"standby mode," "off mode," and "active mode," which are based on the definitions provided in IEC Standard 62301 (FDIS). (*See* section III.C)

3. *Dishwasher standby and off modes.* DOE invites comment on the proposed establishment of inactive mode and cycle finished mode as standby modes for dishwashers and the determination that "delay start mode" would not be considered a standby mode. DOE further invites comment as to whether there are any modes consistent with the "active mode," "standby mode," or "off mode" definitions that have not been identified in this NOPR and the extent to which these modes would represent significant energy use. (*See* section III.C)

4. *Dehumidifier standby and off modes.* DOE invites comment on the proposed establishment of inactive mode, off-cycle mode, and bucket full/removed mode as standby modes for dehumidifiers and the determination that "delay start mode" would not be considered a standby mode. DOE further invites comment as to whether there are any modes consistent with the "active mode," "standby mode," or "off mode" definitions that have not been identified in this NOPR and the extent to which these modes would represent significant energy use. (*See* section III.C)

5. *Conventional cooking products standby and off modes.* DOE invites comment on the proposed establishment of inactive mode and cycle finished mode as standby modes for conventional cooking products and the determination that "delay start mode" and "Sabbath mode" would not be considered a standby mode. DOE further invites comment as to whether there are any modes consistent with the "active mode," "standby mode," or "off mode" definitions that have not been identified in this NOPR and the extent to which these modes would represent significant energy use. (*See* section III.C)

6. *Network mode.* DOE welcomes comment on whether dishwashers, dehumidifiers, and conventional cooking products are currently available that incorporate a networking function and whether a definition for "network mode" and related testing procedures should be incorporated into the DOE test procedure. DOE also requests comment on appropriate methodologies for measuring energy consumption in a network mode for these products, and data on the results and repeatability of such testing methodology. (*See* section III.C)

7. *Default settings.* DOE welcomes comment on the suitability of using product default settings in testing standby energy consumption, on any methodologies that can account for consumer actions that might increase energy use, and data on the repeatability of such testing procedures. (*See* section III.D)

8. *Test room ambient temperature.* DOE seeks comment on the appropriateness of the proposed modified test room ambient temperature range for residential dishwashers, dehumidifiers, and conventional cooking products, which would allow manufacturers to conduct standby mode and off mode testing separately from performance testing under the less stringent ambient conditions specified in the IEC Standard 62301 (First Edition) (*i.e.,* 73.4 ± 9 °F). (*See* section III.D)

9. *Test period.* DOE seeks comment on whether a method in which the clock time on conventional cooking products would be set to 3:23 prior to a 10-minute stabilization period, followed by a 10-minute measurement period commencing at 3:33 would be an acceptable alternative to the method that DOE is proposing (*i.e.,* a 10-minute initial stabilization period, after which the clock would be set to 3:23 and another 10-minute stabilization period provided before a 10-minute measurement starting at a clock time of 3:33). DOE also requests comment on its proposed approach requiring results under the 12-hour test and the 10-minute test to be within ± 2 percent of each other and welcomes data which would show that some other range is more appropriate.

10. *Energy use calculation for standby mode and off mode.* DOE invites comment on the approach for calculating total energy use for standby mode and off mode for dishwashers, dehumidifiers, and conventional cooking products. DOE also invites comment on the allocation of annual hours and test burden, as well as the alternative methodology for allocation of annual hours for each product. (*See* section III.E)

11. *New integrated measures of energy consumption and energy efficiency.* DOE invites comment on the proposed plan to establish new integrated measures of energy consumption for dehumidifiers ("integrated annual energy consumption") and conventional cooking products ("integrated energy factor"). DOE also invites comment on the proposed plan to modify the existing "estimated annual energy use" for dishwashers and "estimated annual operating cost" metrics for dishwashers and conventional cooking products to incorporate the revised measurements of standby mode and off mode energy consumption. (*See* section III.F)

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on November 18, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of Chapter II, Subchapter D of Title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

2. Section 430.3 is amended in paragraph (l)(1) by removing "Appendix N" and adding in its place "Appendix C, Appendix D, Appendix F, Appendix I, Appendix J1, and Appendix N".

3. Section 430.23 is amended by revising paragraphs (c), (i) and (z) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(c) *Dishwashers.* (1) The Estimated Annual Operating Cost (EAOC) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A)(*1*) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured before May 31, 2011:

$$EAOC = (D_e \times S) + (D_e \times N \times (M - (E_D/2)))$$

(*2*) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured on or after May 31, 2011:

$$EAOC = (D_e \times E_{TSO}) + (D_e \times N \times (M - (E_D/2)))$$

(B)(*1*) For dishwashers not having a truncated normal cycle, and which are manufactured before May 31, 2011:

$EAOC = (D_e \times S) + (D_e \times N \times M)$

(*2*) For dishwashers not having a truncated normal cycle, and which are manufactured on or after May 31, 2011:

$EAOC = (D_e \times E_{TSO}) + (D_e \times N \times M)$

Where,

D_e = the representative average unit cost of electrical energy, in dollars per kilowatt-hour, as provided by the Secretary,

S = the simplified annual standby electrical energy in kilowatt-hours per year and determined according to section 5.6 of appendix C to this subpart,

E_{TSO} = the annual standby mode and off mode electrical energy in kilowatt-hours per year and determined according to section 5.7 of appendix C to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine electrical energy consumption per-cycle for the normal cycle as defined in section 1.10 of appendix C to this subpart, in kilowatt-hours and determined according to section 5.1 of appendix C to this subpart,

E_D = the drying energy consumption defined as energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle and determined according to section 5.2 of appendix C to this subpart.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A)(*1*) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured before May 31, 2011:

$EAOC = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$

(*2*) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured on or after May 31, 2011:

$EAOC = (D_e \times E_{TSO}) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$

(B)(*1*) For dishwashers not having a truncated normal cycle, and which are manufactured before May 31, 2011:

$EAOC = (D_e \times S) + (D_e \times N \times M) + (D_e \times N \times W)$

(*2*) For dishwashers not having a truncated normal cycle, and which are manufactured on or after May 31, 2011:

$EAOC = (D_e \times E_{TSO}) + (D_e \times N \times M) + (D_e \times N \times W)$

Where,

D_e, S, E_{TSO}, N, M, and E_D, are defined in paragraph (c)(1)(i) of this section, and

W = the total water energy consumption per cycle for the normal cycle as defined in section 1.10 of appendix C to this subpart, in kilowatt-hours per cycle and determined according to section 5.4 of appendix C to this subpart.

(iii) When gas-heated or oil-heated water is used,

(A)(*1*) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured before May 31, 2011:

$EAOC_g = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$

(*2*) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured on or after May 31, 2011:

$EAOC_g = (D_e \times E_{TSO}) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$

(B)(*1*) For dishwashers not having a truncated normal cycle, and which are manufactured before May 31, 2011:

$EAOC_g = (D_e \times S) + (D_e \times N \times M) + (D_g \times N \times W_g)$

(*2*) For dishwashers not having a truncated normal cycle, and which are manufactured on or after May 31, 2011:

$EAOC_g = (D_e \times E_{TSO}) + (D_e \times N \times M) + (D_g \times N \times W_g)$

Where,

D_e, S, E_{TSO}, N, M, and E_D are defined in paragraph (c)(1)(i) of this section,

D_g = the representative average unit cost of gas or oil, as appropriate, in dollars per Btu, as provided by the Secretary, and

W_g = the total water energy consumption per cycle for the normal cycle as defined in section 1.10 of appendix C to this subpart, in Btus per cycle and determined according to section 5.5 of appendix C to this subpart.

(2) The energy factor for dishwashers, EF, expressed in cycles per kilowatt-hour must be rounded to two decimal places and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart,

$EF = 1/(M - (E_D/2))$

(B) For dishwashers not having a truncated normal cycle,

$EF = 1/M$

Where,

M, and E_D are defined in paragraph (c)(1)(i) of this section.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart,

$EF = 1/(M - (E_D/2) + W)$

(B) For dishwashers not having a truncated normal cycle,

$EF = 1/(M + W)$

Where,

M, and E_D are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(3) The estimated annual energy use, EAEU, expressed in kilowatt-hours per year must be rounded to the nearest kilowatt-hour per year and is defined as follows:

(i) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are:

(A) Manufactured before May 31, 2011; or

(B)(*1*) Manufactured on or after May 31, 2011 and for which EAEU is calculated to determine compliance with energy conservation standards for dishwashers:

$EAEU = (M - (E_D/2) + W) \times N + S$

(*2*) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured on or after May 31, 2011 and for which EAEU is calculated for purposes other than to determine compliance with energy conservation standards for dishwashers:

$EAEU = (M - (E_D/2) + W) \times N + E_{TSO}$

Where,

M, E_D, N, S, and E_{TSO} are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(ii) For dishwashers not having a truncated normal cycle and which are:

(A) Manufactured before May 31, 2011; or

(B)(*1*) Manufactured on or after May 31, 2011 and for which EAEU is calculated to determine compliance with energy conservation standards for dishwashers:

$EAEU = (M + W) \times N + S$

(*2*) For dishwashers not having a truncated normal cycle and which are manufactured on or after May 31, 2011 and for which EAEU is calculated for purposes other than to determine compliance with energy conservation standards for dishwashers:

$EAEU = (M + W) \times N + E_{TSO}$

Where,

M, N, S, and E_{TSO} are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(4) The water consumption, V, expressed in gallons per cycle and defined in section 5.3 of appendix C to this subpart, must be rounded to one decimal place.

(5) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are

derived from the application of appendix C to this subpart.

* * * * *

(i) *Kitchen ranges and ovens.* (1) The estimated annual operating cost for conventional ranges, conventional cooking tops, and conventional ovens shall be the sum of the following products:

(i) The total integrated annual electrical energy consumption for any electrical energy usage, in kilowatt-hours (kWh's) per year, times the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The total annual gas energy consumption for any natural gas usage, in British thermal units (Btu's) per year, times the representative average unit cost for natural gas, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act; plus

(iii) The total annual gas energy consumption for any propane usage, in Btu's per year, times the representative average unit cost for propane, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act. The total annual energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be as determined according to sections 4.3, 4.2.2, and 4.1.2, respectively, of appendix I to this subpart. For conventional gas cooking tops, total integrated annual electrical energy consumption shall be equal to E_{CTSO}, defined in section 4.2.2.2.4 of appendix I to this subpart. The estimated annual operating cost shall be rounded off to the nearest dollar per year.

(2) The cooking efficiency for conventional cooking tops and conventional ovens shall be the ratio of the cooking energy output for the test to the cooking energy input for the test, as determined according to 4.2.1 and 4.1.3, respectively, of appendix I to this subpart. The final cooking efficiency values shall be rounded off to three significant digits.

(3) [Reserved]

(4) The energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total annual energy input, as determined according to 4.3, 4.2.3.1, and 4.1.4.1, respectively, of appendix I to this subpart. The final energy factor values shall be rounded off to three significant digits.

(5) The integrated energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total integrated annual energy input, as determined according to 4.3, 4.2.3.2, and 4.1.4.2, respectively, of appendix I to this subpart. The final integrated energy factor values shall be rounded off to three significant digits.

(6) There shall be two estimated annual operating costs, two cooking efficiencies, and two energy factors for convertible cooking appliances—

(i) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with natural gas; and

(ii) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with LP-gas.

(7) There shall be two integrated energy factors for convertible cooking appliances—

(i) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with natural gas; and

(ii) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with LP-gas.

(8) The estimated annual operating cost for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(1) of this section using the total annual gas energy consumption for natural gas times the representative average unit cost for natural gas.

(9) The estimated annual operating cost for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(1) of this section using the representative average unit cost for propane times the total annual energy consumption of the test gas, either propane or natural gas.

(10) The cooking efficiency for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(2) of this section when the appliance is tested with natural gas.

(11) The cooking efficiency for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(2) of this section, when the appliance is tested with either natural gas or propane.

(12) The energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with natural gas.

(13) The integrated energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(7)(i) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas.

(14) The energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with either natural gas or propane.

(15) The integrated energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(7)(ii) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas or propane.

(16) Other useful measures of energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix I to this subpart.

* * * * *

(z) *Dehumidifiers.* (1) The energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh), shall be measured in accordance with section 4.1 of appendix X of this subpart.

(2) The integrated energy factor for dehumidifiers, expressed in L/kWh, shall be determined according to paragraph 5.2 of appendix X to this subpart.

* * * * *

4. Appendix C to subpart B of part 430 is amended by:

a. Revising the introductory text;

b. Revising section 1. Definitions:

c. In section 2. Testing Conditions:

1. Revising section 2.1;

2. Adding new section 2.2.3;

3. Revising section 2.5;

4. Adding new sections 2.5.1 and 2.5.2;

5. Revising sections 2.6.3.1 through 2.6.3.3;

6. Revising sections 2.8 through 2.10;

d. In section 3. Instrumentation, adding new section 3.8;

e. In section 4, Test Cycle and Measurements:

1. Revising section 4.4;
2. Adding new sections 4.5 and 4.5.1 through 4.5.3;

f. In section 5, Calculation of Derived Results From Test Measurements:
1. Revising section 5.6; and
2. Adding new section 5.7.

The additions and revisions read as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 4.5, 4.5.1 through 4.5.3, and 5.7 of this Appendix C) need not be performed to determine compliance with energy conservation standards for dishwashers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after May 31, 2011 must be based upon results generated under this test procedure using sections 4.5, 4.5.1 through 4.5.3, and 5.7 and disregarding sections 4.4 and 5.6, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1. Definitions

1.1 *Active mode* means a mode in which the dishwasher is connected to a mains power source, has been activated, and is performing one of the main functions of washing, rinsing, or drying (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical, and/or electrical means, or is involved in functions necessary for these main functions, such as admitting water into the dishwasher or pumping water out of the dishwasher.

1.2 *AHAM* means the Association of Home Appliance Manufacturers.

1.3 *Compact dishwasher* means a dishwasher that has a capacity of less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this Appendix.

1.4 *Cycle* means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.5 *Cycle finished mode* means a standby mode which provides continuous status display following operation in active mode.

1.6 *Cycle type* means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.7 *IEC 62301* means the standard published by the International Electrotechnical Commission, titled "Household electrical appliances-Measurement of standby power," Publication 62301 (First Edition 2005–06) (incorporated by reference; see § 430.3).

1.8 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.9 *Non-soil-sensing dishwasher* means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.10 *Normal cycle* means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.

1.11 *Off mode* means a mode in which the dishwasher is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.12 *Power-dry feature* means the introduction of electrically-generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.13 *Preconditioning cycle* means any cycle that includes a fill, circulation, and drain to ensure that the water lines and sump area of the pump are primed.

1.14 *Sensor heavy response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, four place settings of which are soiled according to ANSI/AHAM DW–1 (incorporated by reference; *see* § 430.3). For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.15 *Sensor light response* means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to ANSI/AHAM DW–1 (incorporated by reference; *see* § 430.3).

1.16 *Sensor medium response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, two place settings of which are soiled according to ANSI/AHAM DW–1 (incorporated by reference; *see* § 430.3). For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.

1.17 *Simplified standby mode* means the lowest power consumption mode which cannot be switched off or influenced by the user and that may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions.

1.18 *Soil-sensing dishwasher* means a dishwasher that has the ability to adjust any energy-consuming aspect of a wash cycle based on the soil load of the dishes.

1.19 *Standard dishwasher* means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (incorporated by reference; *see* § 430.3), using the test load specified in section 2.7 of this Appendix.

1.20 *Standby mode* means a mode in which the dishwasher is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) to facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.21 *Truncated normal cycle* means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.22 *Truncated sensor heavy response* means the sensor heavy response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.23 *Truncated sensor light response* means the sensor light response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.24 *Truncated sensor medium response* means the sensor medium response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.25 *Water-heating dishwasher* means a dishwasher which, as recommended by the manufacturer, is designed for heating cold inlet water (nominal 50 °F) or designed for heating water with a nominal inlet temperature of 120 °F. Any dishwasher designated as water-heating (50 °F or 120 °F inlet water) must provide internal water heating to above 120 °F in a least one wash phase of the normal cycle.

2. Testing Conditions

2.1 *Installation Requirements.* Install the dishwasher according to the manufacturer's instructions. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; *see* § 430.3).

* * * * *

2.2.3 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference; *see* § 430.3).

* * * * *

2.5 *Ambient Temperature.*

2.5.1 *Active mode ambient and machine temperature.* Using a temperature measuring device as specified in section 3.1 of this Appendix, maintain the room ambient air temperature at 75 ° ± 5 ° F and ensure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

2.5.2 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; *see* § 430.3).

* * * * *

2.6.3.1 For tests of the sensor heavy response, as defined in section 1.14 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Four of the eight place settings must be soiled according to ANSI/AHAM DW–1 (incorporated by reference, *see* § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the four place settings must be soiled according to ANSI/AHAM DW–1 (incorporated by reference, *see* § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.2 For tests of the sensor medium response, as defined in section 1.16 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the eight place settings must be soiled according to ANSI/AHAM DW–1 (incorporated by reference, *see* § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings must be soiled according to ANSI/AHAM DW–1 (incorporated by reference, *see* § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.3 For tests of the sensor light response, as defined in section 1.15 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the eight place settings must be soiled with half of the soil load specified for a single place setting according to ANSI/AHAM DW–1 (incorporated by reference, *see* § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings must be soiled with half of the soil load specified for a single place setting according to the ANSI/AHAM DW–1 (incorporated by reference, *see* § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

* * * * *

2.8 *Detergent.* Use half the quantity of detergent specified according to ANSI/AHAM DW–1 (incorporated by reference, *see* § 430.3).

2.9 *Testing requirements.* Provisions in this Appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water-heating dishwashers as defined in section 1.25 of this Appendix.

2.10 *Preconditioning requirements.* Precondition the dishwasher by establishing the testing conditions set forth in sections 2.1 through 2.5 of this Appendix. Set the dishwasher to the preconditioning cycle as defined in section 1.13 of this Appendix, without using a test load, and initiate the cycle.

3. Instrumentation

* * * * *

3.8 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall have the resolution specified in Section 4, Paragraph 4.5 of IEC 62301 (incorporated by reference, *see* § 430.3). The watt meter shall also be able to record a "true" average power as specified in Section 5, Paragraph 5.3.2(a) of IEC 62301.

4. Test Cycle and Measurements

* * * * *

4.4 *Simplified standby mode power.* Connect the dishwasher to a standby wattmeter or a standby watt-hour meter as specified in sections 3.6 and 3.7, respectively, of this Appendix. Select the conditions necessary to achieve operation in the simplified standby mode as defined in section 1.17 of this Appendix. Monitor the power consumption but allow the dishwasher to stabilize for at least 5 minutes. Then monitor the power consumption for at least an additional 5 minutes. If the power level does not change by more than 5 percent from the maximum observed value during the later 5 minutes and if there is no cyclic or pulsing behavior of the load, the load can be considered stable. For stable operation, simplified standby mode power, S_m, can be recorded directly from the standby watt meter in watts or accumulated using the standby watt-hour meter over a period of at least 5 minutes. For unstable operation, the energy must be accumulated using the standby watt-hour meter over a period of at least 5 minutes and must capture the energy use over one or more complete cycles. Calculate the average simplified standby mode power, S_m, expressed in watts by dividing the accumulated energy consumption by the duration of the measurement period.

4.5 *Standby mode and off mode power.* Connect the dishwasher to a standby mode and off mode watt meter as specified in sections 3.8 of this Appendix. Establish the testing conditions set forth in sections 2.1, 2.2, and 2.5.2 of this Appendix. For dishwashers that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the dishwasher to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3 of IEC 62301 for testing in each possible mode as described in sections 4.5.1 through 4.5.3 of this Appendix, except allowing the product to stabilize for at least 30 minutes and using an energy use measurement period of not less than 10 minutes. For units in which power varies over a cycle, as described in Section 5, Paragraph 5.3.2 of IEC 62301, use the average power approach in Paragraph 5.3.2(a) of IEC 62301, except allowing the product to stabilize for at least 30 minutes and using an energy use measurement period of not less than 10 minutes.

4.5.1 If the dishwasher has an inactive mode, as defined in section 1.8, measure and record the average inactive mode power of the dishwasher, P_{IA}, in watts.

4.5.2 If the dishwasher has an off mode, as defined in section 1.11, measure and record the average off mode power, P_{OFF}, in watts.

4.5.3 If the dishwasher has a cycle finished mode, as defined in section 1.5, measure and record the average cycle finished mode power, P_{CF}, in watts.

5. Calculation of Derived Results From Test Measurements

* * * * *

5.6 *Annual simplified standby energy consumption.* Calculate the estimated annual simplified standby energy consumption. First determine the number of standby hours per year, H_s, defined as:

$$H_s = H - (N \times L)$$

Where,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option.

Then calculate the estimated annual simplified standby power use, S, expressed in kilowatt-hours per year and defined as:

$$S = S_m \times ((H_s)/1000)$$

Where,

S_m = the simplified standby mode power in watts as determined in section 4.4 of this Appendix.

5.7 *Standby mode and off mode annual energy consumption.* Calculate the standby mode and off mode annual energy

consumption for dishwashers, E_{TSO}, expressed in kilowatt-hours per year, according to the following:

$E_{TSO} = [(P_{IA} \times S_{IA}) + (P_{OFF} \times S_{OFF}) + (P_{CF} \times S_{CF})] \times K$

Where:

P_{IA}= dishwasher inactive mode power, in watts, as measured in section 4.5.1.

P_{OFF} = dishwasher off mode power, in watts, as measured in section 4.5.2.

P_{CF} = dishwasher cycle finished mode power, in watts, as measured in section 4.5.3.

If the dishwasher has both inactive mode and off mode, S_{IA} and S_{OFF} both equal $S_{TOT}/2$;

S_{TOT} equals the total number of inactive mode and off mode hours per year, defined as:

If the dishwasher has cycle finished mode, S_{TOT}, in hours, equals $H_{TSO} - S_{CF}$;

If the dishwasher does not have cycle finished mode, S_{TOT} equals H_{TSO};

H_{TSO} equals the total number of standby mode and off mode hours per year, defined as:

$H_{TSO} = H - (N \times L)$

Where,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option;

If the dishwasher has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT} and the off mode annual hours, S_{OFF}, is equal to 0;

If the dishwasher has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OFF} is equal to S_{TOT};

S_{CF} = 237, dishwasher cycle finished mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

5. Appendix I to subpart B of part 430 is amended:

a. By adding a Note after the appendix heading;

b. In section 1. Definitions, by:

1. Redesignating section 1.10 as 1.15;

2. Redesignating section 1.9 as 1.16;

3. Redesignating section 1.7 as 1.12, and revising it;

4. Redesignating section 1.8 as 1.13;

5. Redesignating section 1.6 as 1.11;

6. Redesignating section 1.5 as 1.9;

7. Redesignating sections 1.2 through 1.4 as 1.4 through 1.6;

8. Redesignating section 1.1 as 1.2; and

9. Adding new sections 1.1, 1.3, 1.7, 1.8, 1.10, and 1.14;

c. In section 2. Test Conditions, by:

1. Revising sections 2.1, 2.1.1, 2.1.2, 2.2.1, 2.5, and 2.6; and

2. Adding new sections 2.2.1.1, 2.2.1.2, 2.5.1, 2.5.2, and 2.9.1.3;

d. In section 3. Test Methods and Measurements, by:

1. Revising sections 3.1.1, 3.1.1.1, and 3.1.2;

2. Adding new sections 3.1.1.3, 3.1.1.3.1, 3.1.1.3.2, and 3.1.1.3.3;

3. Adding new sections 3.1.2.2, 3.1.2.2.1, and 3.1.2.2.2;

4. Adding new sections 3.1.3, 3.1.3.1, 3.1.3.2, and 3.1.3.3;

5. Revising sections 3.2.1, 3.2.1.1, 3.2.1.2, and 3.2.1.4;

6. Redesignating section 3.2.2.1 as 3.2.2.3;

7. Revising section 3.2.2 and adding new sections 3.2.2.1 and 3.2.2.2;

8. Adding new section 3.2.3; and

9. Revising section 3.3.8;

e. In section 4. Calculation of Derived Results From Test Measurements, by:

1. Revising section 4.1.1, 4.1.1.1, 4.1.2.3.1, 4.1.2.4, and 4.1.2.5.1;

2. Redesignating section 4.1.2.5.2 as 4.1.2.5.3, and revising it;

3. Adding new section 4.1.2.5.2;

4. Revising section 4.1.2.6.1;

5. Redesignating section 4.1.2.6.2 as 4.1.6.2.3, and revising newly redesignated section 4.1.6.2.3;

6. Adding new section 4.1.2.6.2;

7. Revising section 4.1.4;

8. Adding new sections 4.1.4.1 and 4.1.4.2;

9. Revising section 4.2.1.1;

10. Revising section 4.2.2.1;

11. Adding new sections 4.2.2.1,1 and 4.2.2.1.2;

12. Revising section 4.2.2.2.3;

13. Adding new section 4.2.2.2.4;

14. Revising section 4.2.3;

15. Adding new sections 4.2.3.1 and 4.2.3.2; and

16. Revising section 4.3.

The additions and revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

Note: The procedures and calculations in this Appendix I need not be performed to determine compliance with energy conservation standards for conventional ranges, conventional cooking tops, and conventional ovens at this time. However, any representation related to standby mode and off mode energy consumption of these products made after May 31, 2011 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required. Although microwave ovens are not currently included in this test procedure, future revisions may add relevant provisions for measuring active mode, standby mode, and off mode energy consumption in those products.

1. Definitions

1.1 *Active mode* means a mode in which a conventional cooking top, conventional oven, or conventional range is connected to a mains power source, has been activated, and is performing the main function of producing heat by means of either a gas flame or electric resistance heating.

* * * * *

1.3 *Cycle finished mode* means a standby mode in which a conventional cooking top, conventional oven, or conventional range provides continuous status display following operation in active mode.

* * * * *

1.7 *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (First Edition 2005–06) (incorporated by reference; *see* § 430.3).

1.8 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

* * * * *

1.10 *Off mode* means a mode in which the product is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

* * * * *

1.12 *Secondary energy consumption* means any electrical energy consumption of a conventional gas oven.

* * * * *

1.14 *Standby mode* means any modes where the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that

provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

* * * * *

2. Test Conditions

2.1 *Installation.* A free standing kitchen range shall be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above and on either side of the appliance. There shall be no side walls. A drop-in, built-in or wall-mounted appliance shall be installed in an enclosure in accordance with the manufacturer's instructions. These appliances are to be completely assembled with all handles, knobs, guards and the like mounted in place. Any electric resistance heaters, gas burners, baking racks, and baffles shall be in place in accordance with the manufacturer's instructions; however, broiler pans are to be removed from the oven's baking compartment.

2.1.1 *Conventional electric ranges, ovens, and cooking tops.* These products shall be connected to an electrical supply circuit with voltage as specified in section 2.2.1 with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; *see* § 430.3).

2.1.2 *Conventional gas ranges, ovens, and cooking tops.* These products shall be connected to a gas supply line with a gas meter installed between the supply line and the appliance being tested, according to manufacturer's specifications. The gas meter shall be as described in section 2.9.2. Conventional gas ranges, ovens, and cooking tops with electrical ignition devices or other electrical components shall be connected to an electrical supply circuit of nameplate voltage with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; *see* § 430.3).

* * * * *

2.2.1 *Electrical Supply*

2.2.1.1 *Supply voltage and frequency.* Maintain the electrical supply to the conventional range, conventional cooking top, and conventional oven being tested at 240/120 volts except that basic models rated only at 208/120 volts shall be tested at that rating. Maintain the voltage within 2 percent of the above-specified voltages. For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain the electrical supply frequency at 60 hertz ± 1 percent. For microwave oven testing, maintain the electrical supply at 120 volts ± 1 volt and at 60 hertz.

2.2.1.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference; *see* § 430.3).

* * * * *

2.5 *Ambient temperature.*

2.5.1 *Active mode ambient room air temperature.* During the active mode test, maintain an ambient room air temperature, T_R, of 77 °± 9 °F (25 °± 5 °C) for conventional ovens and cooking tops, as measured at least 5 feet (1.5 m) and not more than 8 feet (2.4 m) from the nearest surface of the unit under test and approximately 3 feet (0.9 m) above the floor. The temperature shall be measured with a thermometer or temperature indicating system with an accuracy as specified in section 2.9.3.1.

2.5.2 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; *see* § 430.3).

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in section 1.9 of this Appendix, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4, as applicable.

* * * * *

2.9.1.3 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode shall have a resolution as specified in Section 4, Paragraph 4.5 of IEC 62301 (incorporated by reference, *see* § 430.3). The watt meter shall also be able to record a "true" average power as specified in Section 5, Paragraph 5.3.2(a) of IEC 62301.

* * * * *

3. Test Methods and Measurements

* * * * *

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in section 2, *Test Conditions,* of this Appendix, and adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in section 1.9 and described in section 2.6. Set the conventional oven test block W_1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for at least one complete thermostat "cut-off/cut-on" of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in Section 2, *Test Conditions,* of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in section 1.9 and described in section 2.6. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

* * * * *

3.1.1.3 *Conventional oven standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in Section 2, *Test Conditions,* of this Appendix. For conventional ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (incorporated by reference; *see* § 430.3), allow sufficient time for the conventional oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3 of IEC 62301 for testing in each possible mode as described in 3.1.1.3.1 through 3.1.1.3.3, except allowing the product to stabilize for at least 30 minutes and using an energy use measurement period not less than 10 minutes. For units in which power varies as a function of displayed time in standby mode, either: (1) Set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301, and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301, but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301, and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301, but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ± 2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.1.3.1 If the conventional oven has an inactive mode, as defined in section 1.8, measure and record the average inactive mode power of the conventional oven, P_{IA}, in watts.

3.1.1.3.2 If the conventional oven has an off mode, as defined in section 1.10, measure and record the average off mode power of the conventional oven, P_{OFF}, in watts.

3.1.1.3.3 If the conventional oven has a cycle finished mode, as defined in section 1.3, measure and record the average cycle finished mode power of the conventional oven, P_{CF}, in watts.

3.1.2 C*onventional cooking top.* Establish the test conditions set forth in section 2, *Test Conditions,* of this Appendix. Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer's instructions and turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal

nonoperating temperature as defined in section 1.9 and described in section 2.6. Set the test block in the center of the surface unit under test. The small test block, W_2, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3, shall be used on electric surface units over 7 inches (178 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25±5 percent of the maximum energy input rate. After 15±0.1 minutes at the reduced energy setting, turn off the surface unit under test.

* * * * *

3.1.2.2 *Conventional cooking top standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For conventional cooktops that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (incorporated by reference; *see* § 430.3), allow sufficient time for the conventional cooktop to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3 of IEC 62301 for testing in each possible mode as described in sections 3.1.2.2.1 and 3.1.2.2.2 of this Appendix, except allowing the product to stabilize for at least 30 minutes and using an energy use measurement period not less than 10 minutes. For units in which power varies as a function of displayed time in standby mode, either: (1) set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301, and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301, but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301, and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301, but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ± 2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.2.2.1 If the conventional cooking top has an inactive mode, as defined in section 1.8, measure and record the average inactive mode power of the conventional cooking top, P_{IA}, in watts.

3.1.2.2.2 If the conventional cooking top has an off mode, as defined in section 1.10, measure and record the average off mode power of the conventional cooking top, P_{OFF}, in watts.

3.1.3 *Conventional range standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For conventional ranges that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the conventional range to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3 of IEC 62301 for testing in each possible mode as described in sections 3.1.3.1 through 3.1.3.3 of this Appendix, except allowing the product to stabilize for at least 30 minutes and using an energy use measurement period not less than 10 minutes. For units in which power varies as a function of displayed time in standby mode, either: (1) set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301, and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301, but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301, and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301, but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ± 2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.3.1 If the conventional range has an inactive mode, as defined in section 1.8, measure and record the average inactive mode power of the conventional range, P_{IA}, in watts.

3.1.3.2 If the conventional range has an off mode, as defined in section 1.10, measure and record the average off mode power of the conventional range, P_{OFF}, in watts.

3.1.3.3 If the conventional range has a cycle finished mode, as defined in section 1.3, measure and record the average cycle finished mode power of the conventional range, P_{CF}, in watts.

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3.2.1 *Conventional oven test energy consumption.* If the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed, E_O, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last "ON" period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next "ON" period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that "ON" period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following "ON" period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven, measure in watt-hours (kJ) any electrical energy, E_{IO}, consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O.

3.2.1.1 *Conventional oven average test energy consumption.* If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last "ON" period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next "ON" period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that "ON" period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following "ON" period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure in watt-hours (kJ) any electrical energy consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O using the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.2.1.2 *Energy consumption of self-cleaning operation.* Measure the energy consumption, E_S, in watt-hours (kJ) of electricity or the volume of gas consumption, V_S, in standard cubic feet (L) during the self-cleaning test set forth in section 3.1.1.1 of this Appendix. For a gas oven, also measure in watt-hours (kJ) any electrical energy, E_{IS}, consumed by ignition devices or other electrical components required during the self-cleaning test.

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3.2.1.4 *Standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.1.3 of this Appendix.

If the conventional oven is capable of operating in inactive mode, measure the average inactive mode power of the conventional oven, P_{IA}, in watts as specified in section 3.1.1.3.1 of this Appendix. If the conventional oven is capable of operating in off mode, measure the average off mode power of the conventional oven, P_{OFF}, in watts as specified in section 3.1.1.3.2 of this Appendix. If the conventional oven is capable of operating in cycle finished mode, measure the average cycle finished mode power of the conventional oven, P_{CF}, in watts as specified in section 3.1.1.3.3 of this Appendix.

3.2.2 *Conventional surface unit test energy consumption.*

3.2.2.1 *Conventional surface unit average test energy consumption.* For the surface unit under test, measure the energy consumption, E_{CT}, in watt-hours (kJ) of electricity or the volume of gas consumption, V_{CT}, in standard cubic feet (L) of gas and the test block temperature, T_{CT}, at the end of the 15 minute (reduced input setting) test interval for the test specified in section 3.1.2 of this Appendix and the total time, t_{CT}, in hours, that the unit is under test. Measure any electrical energy, E_{IC}, consumed by an ignition device of a gas heating element or other electrical components required for the operation of the conventional gas cooktop in watt-hours (kJ).

3.2.2.2 *Conventional surface unit standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.2.2 of this Appendix. If the conventional surface unit is capable of operating in inactive mode, measure the average inactive mode power of the conventional surface unit, P_{IA}, in watts as specified in section 3.1.2.2.1 of this Appendix. If the conventional surface unit is capable of operating in off mode, measure the average off mode power of the conventional surface unit, P_{OFF}, in watts as specified in section 3.1.2.2.2 of this Appendix.

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3.2.3 *Conventional range standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.3 of this Appendix. If the conventional range is capable of operating in inactive mode, measure the average inactive mode power of the conventional range, P_{IA}, in watts as specified in section 3.1.3.1 of this Appendix. If the conventional range is capable of operating in off mode, measure the average off mode power of the conventional range, P_{OFF}, in watts as specified in section 3.1.3.2 of this Appendix. If the conventional range is capable of operating in cycle finished mode, measure the average cycle finished mode power of the conventional range, P_{CF}, in watts as specified in section 3.1.3.3 of this Appendix.

* * * * *

3.3.8 For conventional ovens, record the conventional oven standby mode and off mode test measurements P_{IA}, P_{OFF}, and P_{CF}, if applicable. For conventional cooktops, record the conventional cooktop standby mode and off mode test measurements P_{IA} and P_{OFF}, if applicable. For conventional ranges, record the conventional range standby mode and off mode test measurements P_{IA}, P_{OFF}, and P_{CF}, if applicable.

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4. Calculation of Derived Results From Test Measurements

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4.1.1 *Test energy consumption.* For a conventional oven with a thermostat which operates by cycling on and off, calculate the test energy consumption, E_O, expressed in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens, and defined as:

$$E_O = E_{AB} + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}} \right) \times \left(E_{CD} - E_{AB} \right) \right]$$

for electric ovens, and,

$$E_O = \left(V_{AB} \times H \right) + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}} \right) \times \left(V_{CD} - V_{AB} \right) \times H \right]$$

for gas ovens,

Where:

H = either H_n or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3 of this Appendix, expressed in Btu's per standard cubic foot (kJ/L).

T_O = 234 °F (130 °C) plus the initial test block temperature.

and,

$$E_{AB} = \frac{\left(E_A + E_B \right)}{2}, \quad E_{CD} = \frac{\left(E_C + E_D \right)}{2},$$

$$V_{AB} = \frac{\left(V_A + V_B \right)}{2}, \quad V_{CD} = \frac{\left(V_C + V_D \right)}{2},$$

$$T_{AB} = \frac{\left(T_A + T_B \right)}{2}, \quad T_{CD} = \frac{\left(T_C + T_D \right)}{2},$$

Where:

T_A = block temperature in °F (°C) at the end of the last "ON" period of the conventional oven before the test block reaches T_O.

T_B = block temperature in °F (°C) at the beginning of the "ON" period following the measurement of T_A.

T_C = block temperature in °F (°C) at the end of the "ON" period which starts with T_B.

T_D = block temperature in °F (°C) at the beginning of the "ON" period which follows the measurement of T_C.

E_A = electric energy consumed in Wh (kJ) at the end of the last "ON" period before the test block reaches T_O.

E_B = electric energy consumed in Wh (kJ) at the beginning of the "ON" period following the measurement of T_A.

E_C = electric energy consumed in Wh (kJ) at the end of the "ON" period which starts with T_B.

E_D = electric energy consumed in Wh (kJ) at the beginning of the "ON" period which follows the measurement of T_C.

V_A = volume of gas consumed in standard cubic feet (L) at the end of the last "ON" period before the test block reaches T_O.

V_B = volume of gas consumed in standard cubic feet (L) at the beginning of the "ON" period following the measurement of T_A.

V_C = volume of gas consumed in standard cubic feet (L) at the end of the "ON" period which starts with T_B.

V_D = volume of gas consumed in standard cubic feet (L) at the beginning of the "ON" period which follows the measurement of T_C.

4.1.1.1 *Average test energy consumption.* If the conventional oven can be operated with or without forced convection, determine the average test energy consumption, E_O and $E_{IO,}$ in watt-hours (kJ) for electric ovens and Btu's (kJ) for gas ovens using the following equations:

$$E_O = \frac{(E_O)_1 + (E_O)_2}{2}$$

$$E_{IO} = \frac{(E_{IO})_1 + (E_{IO})_2}{2}$$

Where:

$(E_O)_1$ = test energy consumption using the forced convection mode in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens as measured in section 3.2.1.1 of this Appendix.

$(E_O)_2$ = test energy consumption without using the forced convection mode in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens as measured in section 3.2.1.1 of this Appendix.

$(E_{IO})_1$ = electrical energy consumption in watt-hours (kJ) of a gas oven in forced convection mode as measured in section 3.2.1.1 of this Appendix.

$(E_{IO})_2$ = electrical energy consumption in watt-hours (kJ) of a gas oven without using the forced convection mode as measured in section 3.2.1.1 of this Appendix.

* * * * *

4.1.2.3.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for conventional oven self-cleaning operations, $E_{SC,}$ expressed in kilowatt-hours (kJ) per year for electric ovens and in Btu's (kJ) for gas ovens, and defined as:

$E_{SC} = E_S \times S_e \times K$, for electric ovens,

Where:

E_S = energy consumption in watt-hours, as measured in section 3.2.1.2 of this Appendix.

S_e = 4, average number of times a self-cleaning operation of a conventional electric oven is used per year.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

or

$E_{SC} = V_S \times H \times S_g$, for gas ovens,

Where:

V_S = gas consumption in standard cubic feet (L), as measured in section 3.2.1.2 of this Appendix.

H = H_n or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3 of this Appendix in Btu's per standard cubic foot (kJ/L).

S_g = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

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4.1.2.4 *Annual standby mode and off mode energy consumption of a single conventional oven.* Calculate the annual standby mode and off mode energy consumption for conventional ovens, E_{OTSO}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{OTSO} = [(P_{IA} \times S_{IA}) + (P_{OFF} \times S_{OFF}) + (P_{CF} \times S_{CF})] \times K$

Where:

P_{IA} = conventional oven inactive mode power, in watts, as measured in section 3.1.1.3.1 of this Appendix.

P_{OFF} = conventional oven off mode power, in watts, as measured in section 3.1.1.3.2 of this Appendix.

P_{CF} = conventional oven cycle finished mode power, in watts, as measured in section 3.1.1.3.3 of this Appendix.

If the conventional oven has cycle finished mode, S_{TOT} equals 8,522.1 hours:

Where:

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional oven does not have cycle finished mode, S_{TOT} equals 8,540.1 hours;

If the conventional oven has both inactive mode and off mode, S_{IA} and S_{OFF} both equal $S_{TOT}/2$;

If the conventional oven has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT} and the off mode annual hours, S_{OFF}, is equal to 0;

If the conventional oven has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OFF} is equal to S_{TOT};

S_{CF} = 18, conventional oven cycle finished mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

* * * * *

4.1.2.5.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption of a conventional electric oven, E_{AO}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AO} = E_{CO} + E_{SC}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.3.1 of this Appendix.

4.1.2.5.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual electrical energy consumption of a conventional electric oven, IE_{AD}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AO} = E_{CO} + E_{SC,} + E_{OTSO,}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.3.1 of this Appendix.

E_{OTSO} = annual standby mode and off mode energy consumption as determined in section 4.1.2.4 of this Appendix.

4.1.2.5.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption of a conventional gas oven, $E_{AOG,}$ expressed in Btu's (kJ) per year and defined as:

$E_{AOG} = E_{CO} + E_{SC} + E_{PO}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.

E_{PO} = annual pilot light energy consumption as determined in section 4.1.2.2 of this Appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.3.1 of this Appendix.

If the conventional gas oven uses electrical energy, calculate the total annual electrical energy consumption, E_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AOE} = E_{SO} + E_{SS}$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this Appendix.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.3.2 of this Appendix.

If the conventional gas oven uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AOE} = E_{SO} + E_{SS} + E_{OTSO}$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this Appendix.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.3.2 of this Appendix.

E_{OTSO} = annual standby mode and off mode energy consumption as determined in section 4.1.2.4 of this Appendix.

* * * * *

4.1.2.6.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption, E_{TO}, in kilowatt-hours (kJ) per year and defined as:

$E_{TO} = E_{ACO} + E_{ASC}$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.3.1 of this Appendix.

4.1.2.6.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual energy consumption, IE_{TO}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TO} = E_{ACO} + E_{ASC} + E_{OTSO}$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.3.1 of this Appendix.

E_{OTSO} = annual standby mode and off mode energy consumption for the cooking appliance as determined in section 4.1.2.4 of this Appendix.

4.1.2.6.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption, E_{TOG}, in Btus (kJ) per year and defined as:

$E_{TOG} = E_{ACO} + E_{ASC} + E_{TPO}$,

Where:

E_{ACO} = average annual primary energy consumption for cooking in Btu's (kJ) per year and is calculated as:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

Where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

and,

E_{ASC} = average annual self-cleaning energy consumption in Btu's (kJ) per year and is calculated as:

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.3.1 of this Appendix.

$$E_{TPO} = \sum_{i=1}^{n}\left(E_{PO}\right)_i ,$$

total energy consumption of any pilot lights,

Where:

E_{PO} = annual energy consumption of any continuously-burning pilot lights determined according to section 4.1.2.2 of this Appendix.

n = number of pilot lights in the basic model.

If the oven also uses electrical energy, calculate the total annual electrical energy consumption, E_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$E_{TOE} = E_{ASO} + E_{AAS}$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this Appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.3.2 of this Appendix.

If the oven also uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TOE} = E_{ASO} + E_{AAS} + E_{OTSO}$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this Appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.3.2 of this Appendix.

E_{OTSO} = annual standby mode and off mode energy consumption as determined in section 4.1.2.4 of this Appendix.

* * * * *

4.1.4 *Conventional oven energy factor and integrated energy factor.*

4.1.4.1 *Conventional oven energy factor.* Calculate the energy factor, or the ratio of useful cooking energy output to the total energy input, R_O, using the following equations:

$$R_O = \frac{O_O}{E_{AO}}$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

E_{AO} = total annual energy consumption for electric ovens as determined in section 4.1.2.5.1 of this Appendix.

For gas ovens:

$$R_O = \frac{O_O}{E_{AOG} + (E_{AOE} \times K_e)}$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.5.3 of this Appendix.

E_{AOE} = total annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.5.3 of this Appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btu's.

4.1.4.2 *Conventional oven integrated energy factor.* Calculate the integrated energy factor, or the ratio of useful cooking energy output to the total integrated energy input, IR_O, using the following equations:

$$IR_O = \frac{O_O}{IE_{AO}}$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

IE_{AO} = total integrated annual energy consumption for electric ovens as determined in section 4.1.2.5.2 of this Appendix.

For gas ovens:

$$IR_O = \frac{O_O}{E_{AOG} + (E_{AOE} \times K_e)}$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.5.3 of this Appendix.

IE_{AOE} = total integrated annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.5.3 of this Appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btu's.

* * * * *

4.2.1.1 *Electric surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the electric surface unit under test, defined as:

$$Eff_{SU} = W \times C_P \times \left(\frac{T_{SU}}{K_e \times E_{CT}} \right)$$

Where:

W = measured weight of test block, W_2 or W_3, expressed in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.96 kJ/kg ÷ °C), specific heat of test block.

T_{SU} = temperature rise of the test block: final test block temperature, T_{CT}, as determined in section 3.2.2 of this Appendix, minus the initial test block temperature, T_I, expressed in °F (°C) as determined in section 2.7.5 of this Appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btu's.

E_{CT} = measured energy consumption, as determined according to section 3.2.2 of this Appendix, expressed in watt-hours (kJ).

* * * * *

4.2.2.1 *Conventional electric cooking top*

4.2.2.1.1 *Annual energy consumption of a conventional electric cooking top.* Calculate the annual electrical energy consumption of an electric cooking top, E_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$E_{CA} = \frac{O_{CT}}{Eff_{CT}}$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this Appendix.

4.2.2.1.2 *Integrated annual energy consumption of a conventional electric cooking top.* Calculate the total integrated annual electrical energy consumption of an electric cooking top, IE_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$IE_{CA} = \frac{O_{CT}}{Eff_{CT}} + E_{CTSO}$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this Appendix.

$E_{CTSO} = [(P_{IA} \times S_{IA}) + (P_{OFF} \times S_{OFF})] \times K$

Where:

P_{IA} = conventional cooktop inactive mode power, in watts, as measured in section 3.1.2.2.1 of this Appendix.

P_{OFF} = conventional cooktop off mode power, in watts, as measured in section 3.1.2.2.2 of this Appendix.

If the conventional cooktop has both inactive mode and off mode annual hours, S_{IA} and S_{OFF} both equal 4273.4;

If the conventional cooktop has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9 and the off mode annual hours, S_{OFF}, is equal to 0;

If the conventional cooktop has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OFF} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

* * * * *

4.2.2.2.3 *Total annual energy consumption of a conventional gas cooking top.* Calculate the total annual gas energy consumption of a conventional gas cooking top, E_{CA}, in Btu's (kJ) per year, defined as:

$E_{CA} = E_{CC} + E_{PC}$,

Where:

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this Appendix.

E_{PC} = annual energy consumption of the pilot lights as determined in section 4.2.2.2.2 of this Appendix.

4.2.2.2.4 *Total integrated annual energy consumption of a conventional gas cooking top.* Calculate the total integrated annual energy consumption of a conventional gas cooking top, IE_{CA}, in Btu's (kJ) per year, defined as:

$IE_{CA} = E_{CC} + E_{PC} + E_{CTSO}$,

Where:

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this Appendix.

E_{PC} = annual energy consumption of the pilot lights as determined in section 4.2.2.2.2 of

$E_{CTSO} = [(P_{IA} \times S_{IA}) + (P_{OFF} \times S_{OFF})] \times K$

Where:

P_{IA} = conventional cooktop inactive mode power, in watts, as measured in section 3.1.2.2.1 of this Appendix.

P_{OFF} = conventional cooktop off mode power, in watts, as measured in section 3.1.2.2.2 of this Appendix.

If the conventional cooktop has both inactive mode and off mode annual hours, S_{IA} and S_{OFF} both equal 4273.4;

If the conventional cooktop has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9 and the off mode annual hours, S_{OFF}, is equal to 0;

If the conventional cooktop has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OFF} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.2.3 *Conventional cooking top energy factor and integrated energy factor.*

4.2.3.1 *Conventional cooking top energy factor.* Calculate the energy factor or ratio of useful cooking energy output for cooking to the total energy input, R_{CT}, as follows:

For an electric cooking top, the energy factor is the same as the cooking efficiency as determined according to section 4.2.1.3 of this Appendix.

For gas cooking tops,

$$R_{CT} = \frac{O_{CT}}{E_{CA}}$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

E_{CA} = total annual energy consumption of cooking top determined according to section 4.2.2.2.3 of this Appendix.

4.2.3.2 *Conventional cooking top integrated energy factor.* Calculate the integrated energy factor or ratio of useful cooking energy output for cooking to the total integrated energy input, $IR_{CT,}$ as follows:

For electric cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}}$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total annual integrated energy consumption of cooking top determined according to section 4.2.2.1.2 of this Appendix.

For gas cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}}$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total annual energy consumption of cooking top determined according to section 4.2.2.2.4 of this Appendix.

4.3 *Combined components.* The annual energy consumption of a kitchen range (*e.g.,* a cooktop and oven combined) shall be the sum of the annual energy consumption of each of its components. The integrated annual energy consumption of a kitchen range shall be the sum of the annual energy consumption of each of its components plus the conventional range integrated annual standby mode and off mode energy consumption, E_{RTSO}, defined as:

$E_{RTSO} = [(P_{IA} \times S_{IA}) + (P_{OFF} \times S_{OFF}) + (P_{CF} \times S_{CF})] \times K$

Where:

P_{IA} = conventional range inactive mode power, in watts, as measured in section 3.1.3.1 of this Appendix.

P_{OFF} = conventional range off mode power, in watts, as measured in section 3.1.3.2 of this Appendix.

P_{CF} = conventional range cycle finished mode power, in watts, as measured in section 3.1.3.3 of this Appendix.

If the conventional range has cycle finished mode, S_{TOT}, equals 8,311.2 hours;

Where:

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional range does not have cycle finished mode, S_{TOT}, equals 8,329.2 hours;

If the conventional range has both inactive mode and off mode, S_{IA} and S_{OFF} both equal $S_{TOT}/2$;

If the conventional range has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT} and the off mode annual hours, S_{OFF}, is equal to 0;

If the conventional range has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OFF} is equal to S_{TOT};

S_{CF} = 18, conventional range cycle finished mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

The annual energy consumption for other combinations of ovens and cooktops will also be treated as the sum of the annual energy consumption of each of its components. The energy factor of a combined component is the sum of the annual useful cooking energy output of each component divided by the sum of the total annual energy consumption of each component. The integrated energy factor of other combinations of ovens and cooktops is the sum of the annual useful cooking energy output of each component divided by the sum of the total integrated annual energy consumption of each component.

6. Appendix X to subpart B of part 430 is revised to read as follows:

Appendix X to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 3.2, 3.2.1 through 3.2.4, 4.2, 4.2.1 through 4.2.4, 5.1, and 5.2 of this Appendix X) need not be performed to determine compliance with energy conservation standards for dehumidifiers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after May 31, 2011 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1. Scope

This appendix covers the test requirements used to measure the energy performance of dehumidifiers.

2. Definitions

a. *Active mode* means a mode in which a dehumidifier is connected to a mains power source, has been activated, and is performing the main functions of removing moisture from air by drawing moist air over a refrigerated coil using a fan, or circulating air through activation of the fan without activation of the refrigeration system.

b. *Bucket full/removed mode* means a standby mode in which the dehumidifier has automatically powered off its main function by detecting when the water bucket is full or has been removed.

c. *Energy factor for dehumidifiers* means a measure of energy efficiency of a dehumidifier calculated by dividing the water removed from the air by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

d. *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled "Household electrical appliances—Measurement of standby power," Publication 62301 (First Edition 2005–06) (incorporated by reference; *see* § 430.3).

e. *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

f. *Off mode* means a mode in which the dehumidifier is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the dehumidifier is in the off position is included within the classification of an off mode.

g. *Off-cycle mode* means a standby mode in which the dehumidifier:

(1) Has cycled off its main function by humidistat or humidity sensor;

(2) Does not have its fan or blower operating; and

(3) Will reactivate the main function according to the humidistat or humidity sensor signal.

h. *Product capacity for dehumidifiers* means a measure of the ability of the dehumidifier to remove moisture from its surrounding atmosphere, measured in pints collected per 24 hours of continuous operation.

i. *Standby mode* means any modes where the dehumidifier is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(2) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

3. Test Apparatus and General Instructions

3.1 *Active mode.* The test apparatus and instructions for testing dehumidifiers shall conform to the requirements specified in section 1, "Definitions," section 2,

"Qualifying Products," and section 4, "Test Criteria," of the EPA's "ENERGY STAR Program Requirements for Dehumidifiers," effective January 1, 2001 (incorporated by reference, *see* § 430.3). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final minimum energy factor value to two decimal places as follows:

(i) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places; or

(ii) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

3.2 *Standby mode and off mode.*

3.2.1 *Installation requirements.* For the standby mode and off mode testing, the dehumidifier shall be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference, *see* § 430.3).

3.2.2 *Electrical energy supply.*

3.2.2.1 *Electrical supply.* For the standby mode and off mode testing, maintain the electrical supply voltage indicated in section 4, "Test Criteria," of the EPA's "ENERGY STAR Program Requirements for Dehumidifiers," effective January 1, 2001, (incorporated by reference, *see* § 430.3) and the electrical supply frequency indicated in section 4, "Test Criteria," of the EPA's "ENERGY STAR Program Requirements for Dehumidifiers," ±1 percent.

3.2.2.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.4 of IEC 62301, (incorporated by reference; *see* § 430.3).

3.2.3 *Standby watt meter.* The watt meter used to measure standby mode and off mode power consumption shall have the resolution specified in Section 4, Paragraph 4.5 of IEC 62301 (incorporated by reference, see § 430.3). The watt meter shall also be able to record a "true" average power as specified in Section 5, Paragraph 5.3.2(a) of IEC 62301.

3.2.4 *Standby and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; *see* § 430.3).

4. Test Measurement

4.1 *Active mode.* Measure the energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh) and product capacity in pints per day (pints/day), in accordance with the test requirements specified in section 4, "Test Criteria," of EPA's "ENERGY STAR Program Requirements for Dehumidifiers," effective January 1, 2001 (incorporated by reference, *see* § 430.3).

4.2 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this Appendix. For dehumidifiers that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301, (incorporated by reference; *see* § 430.3), allow sufficient time for the dehumidifier to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3 of IEC 62301 for testing in each possible mode as described in sections 4.2.1 through 4.2.4 of this Appendix, except allowing the product to stabilize for at least 30 minutes and using an energy use measurement period of not less than 10 minutes. For units in which power varies over a cycle, as described in Section 5, Paragraph 5.3.2 of IEC 62301, use the average power approach in Section 5, Paragraph 5.3.2(a) of IEC 62301, except allowing the product to stabilize for at least 30 minutes and using an energy use measurement period of not less than 10 minutes.

4.2.1 If the dehumidifier has an inactive mode, as defined in section 2(e) of this Appendix, measure and record the average inactive mode power of the dehumidifier, P_{IA}, in watts.

4.2.2 If the dehumidifier has an off-cycle mode, as defined in section 2(g) of this Appendix, measure and record the average off-cycle mode power of the dehumidifier, P_{OC}, in watts.

4.2.3 If the dehumidifier has a bucket full/removed mode, as defined in section 2(b) of this Appendix, measure and record the average bucket full/removed mode power of the dehumidifier, P_{BFR}, in watts.

4.2.4 If the dehumidifier has an off mode, as defined in section 2(f) of this Appendix, measure and record the average off mode power, P_{OFF}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Standby mode and off mode annual energy consumption.* Calculate the standby mode and off mode annual energy consumption for dehumidifiers, E_{TSO}, expressed in kilowatt-hours per year, according to the following:

$$E_{TSO} = [(P_{IA} \times S_{IA}) + (P_{OC} \times S_{OC}) + (P_{BFR} \times S_{BFR}) + (P_{OFF} \times S_{OFF})] \times K$$

Where:

P_{IA} = dehumidifier inactive mode power, in watts, as measured in section 4.2.1 of this Appendix.

P_{OC} = dehumidifier off-cycle mode power, in watts, as measured in section 4.2.2 of this Appendix.

P_{BFR} = dehumidifier bucket full/removed mode power, in watts, as measured in section 4.2.3 of this Appendix.

P_{OFF} = dehumidifier off mode power, in watts, as measured in section 4.2.4 of this Appendix.

If the dehumidifier has an inactive mode and off-cycle mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/2$; the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/2$; and the off mode annual hours, S_{OFF}, is equal to 0;

S_{TOT} equals the total number of inactive mode, off-cycle mode, and off mode hours per year, defined as:

If the dehumidifier has bucket full/removed mode, S_{TOT} equals 3,024 hours;

If the dehumidifier does not have bucket full/removed mode, S_{TOT} equals 3,681 hours;

If the dehumidifier has an inactive mode and off mode but no off-cycle mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/2$; the off mode annual hours, S_{OFF}, is equal to $S_{TOT}/2$; and the off-cycle mode annual hours, S_{OC}, is equal to 0;

If the dehumidifier has an inactive mode but no off-cycle mode or off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off-cycle mode annual hours, S_{OC}, and the off mode annual hours, S_{OFF}, are each equal to 0;

If the dehumidifier has an off-cycle mode and off mode but no inactive mode, the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/2$; the off mode annual hours, S_{OFF}, is equal to $S_{TOT}/2$; and the inactive mode annual hours, S_{IA}, is equal to 0;

If the dehumidifier has an off-cycle mode but no off mode or inactive mode, the off-cycle mode annual hours, S_{OC}, is equal to S_{TOT}, and the off mode annual hours, S_{OFF}, and the inactive mode annual hours, S_{IA}, are each equal to 0;

If the dehumidifier has an off mode but no inactive mode or off-cycle mode, the off mode annual hours, S_{OFF}, is equal to S_{TOT}, and the inactive mode annual hours, S_{IA}, and the off-cycle mode annual hours, S_{OC}, are both equal to 0;

If the dehumidifier has an inactive mode, off-cycle mode, and off mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/3$; the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/3$; and the off mode annual hours, S_{OFF}, is equal to $S_{TOT}/3$;

S_{BFR} = 657, dehumidifier bucket full/removed mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

5.2 *Integrated energy factor.* Calculate the integrated energy factor, IEF, expressed in liters per kilowatt-hour, rounded to two decimal places, according to the following:

$$IEF = L_W/(E_{active} + ((E_{TSO} \times 24)/S_{active}))$$

Where:

L_W = water removed from the air during dehumidifier energy factor test, in liters, as measured in section 4.1 of this Appendix.

E_{active} = dehumidifier energy factor test energy consumption, in kilowatt-hours, as measured in section 4.1 of this Appendix.

E_{TSO} = standby mode and off mode annual energy consumption, in kilowatt-hours per year, as calculated in section 5.1 of this Appendix.

24 = hours per day.

S_{active} = 1,095, dehumidifier active mode annual hours.

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Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Integration of Variable Energy Resources; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–11–000]

Integration of Variable Energy Resources

November 18, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission proposes to reform the *pro forma* Open Access Transmission Tariff to remove unduly discriminatory practices and to ensure just and reasonable rates for Commission-jurisdictional services. Accordingly, the Proposed Rule would: require public utility transmission providers to offer intra-hourly transmission scheduling; incorporate provisions into the *pro forma* Large Generator Interconnection Agreement requiring interconnection customers whose generating facilities are variable energy resources to provide meteorological and operational data to public utility transmission providers for the purpose of power production forecasting; and add a generic ancillary service rate schedule through which public utility transmission providers will offer regulation service to transmission customers delivering energy from a generator located within the transmission provider's balancing authority area. The proposed reforms will remove barriers to the integration of variable energy resources.

DATES: Comments are due January 31, 2011.

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's Web site, *http://www.ferc.gov.* Comments may be submitted by any of the following methods:

- *Agency Web site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, *see, e.g.,* the "Quick Reference Guide for Paper Submissions," available at *http://www.ferc.gov/docs-filing/efiling.asp,* or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

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I. Introduction

1. In this Notice of Proposed Rulemaking (Proposed Rule), the Federal Energy Regulatory Commission (Commission) proposes reforms to the *pro forma* Open Access Transmission Tariff (OATT) that derive from the Integration of Variable Energy Resources Notice of Inquiry.[1] The Commission initiated that inquiry to obtain information on barriers to the integration of variable energy resources (VER)[2] and on the current state of VER integration in various regions of the country. Not unexpectedly, commenters indicate that VER presence is not uniform throughout the country. Commenters also describe their experiences integrating VERs and the on-going industry efforts designed to address issues posed by increasing numbers of VERs. Many of these industry efforts are significant in scope and have the potential to address issues confronting regions where large

[1] *Integration of Variable Energy Resources,* 130 FERC ¶ 61,053 (2010) (Integrating VERs NOI).

[2] For the purpose of this proceeding, the term variable energy resource (VER) refers to an electric generating facility that is characterized by an energy source that: (1) Is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. This includes, for example, wind, solar thermal and photovoltaic, and hydrokinetic generating facilities.

concentrations of VERs are located.[3] Accordingly, in the Proposed Rule, the Commission has decided to propose a limited set of reforms to existing operational procedures that we preliminarily find to be unduly discriminatory and leading to unjust and unreasonable rates for transmission service. Specifically, the Proposed Rule addresses transmission scheduling practices, VER power production forecasts, and the recovery of capacity charges associated with generator imbalance service (*i.e.,* generator regulation service).

2. In Order No. 890, the Commission made several reforms to the *pro forma* OATT, recognizing that the mix of generation resources on the system was changing and that not all generation resources were similarly situated.[4] The Commission recognized that intermittent resources, such as wind power, have a limited ability to control their output, and that this limitation supports tailoring certain requirements to the special circumstances presented by this type of resource.[5] Similarly, the Commission preliminarily finds that the practice of hourly scheduling, the lack of VER power production forecasting, and the lack of a clear mechanism to recover the cost of providing generator regulation service may be contributing to undue discrimination and unjust and unreasonable rates in light of the entry and increasing presence of VERs on the transmission grid.

3. In this Proposed Rule, the Commission proposes the following three reforms: (1) Amend the *pro forma* OATT to require intra-hourly transmission scheduling; (2) amend the *pro forma* Large Generator Interconnection Agreement to incorporate provisions requiring interconnection customers whose generating facilities are VERs to provide meteorological and operational data to public utility transmission providers for the purpose of improved power production forecasting; and (3) amend the *pro forma* OATT to add a generic ancillary service rate schedule, Schedule 10—Generator Regulation and Frequency Response Service, in which public utility transmission providers will offer to provide regulation service for transmission customers using transmission service to deliver energy from a generator located within a public utility transmission provider's balancing authority area. The Commission recognizes that as the number of VERs increases, public utility transmission providers and their customers will need processes and tools to manage the changing nature of generation resources on the transmission grid. As such, the Commission believes the reforms proposed herein will address some of the barriers to the integration of VERs by remedying operational and other challenges that may be causing undue discrimination and increased costs ultimately borne by consumers.

4. Specifically, the Commission preliminarily finds that requiring transmission customers to adhere to hourly schedules may be unduly discriminatory and result in the inefficient use of transmission and generation resources to the detriment of consumers. The Commission also preliminarily finds that a lack of VER power production forecasts may unnecessarily increase the volume of regulation reserves deployed by a public utility transmission provider, resulting in rates that are unjust and unreasonable, and that a public utility transmission provider currently lacks the means by which to require VERs to provide it with basic information on meteorological and operational conditions which can be used to develop VER power production forecasts. Finally, although the Commission contemplated a case-by-case approach to generator regulation service in Order No. 890,[6] the increased interest as evidenced by commenters and the number of Commission filings related to this service has led us to consider a generic approach to the provision of generator regulation service, such as the one proposed here.

5. Taken together, these proposed reforms mean: VERs and other resources will be able to adjust schedules within the operating hour, allowing public utility transmission providers to commit fewer generation and non-generation resources to provide reserves; public utility transmission providers will have better meteorological and operational information from interconnection customers whose generating facilities are VERs and will be able to use this information to develop power production forecasts for use in operating their systems, thus mitigating the volume of regulation reserves they deploy; and public utility transmission providers will have a generic schedule from which to recover the costs of providing generator regulation service, and customers and other market participants will know the cost of such service. These proposed reforms are intended to ensure that the requirements set forth in the *pro forma* OATT result in the provision of Commission-jurisdictional services at rates that are just and reasonable, and not unduly discriminatory or preferential, consistent with the Commission's responsibilities under sections 205 and 206 of the Federal Power Act (FPA).[7]

II. Background

6. In 1996, the Commission issued Order No. 888, which found that it was in the economic interest of public utility transmission providers to deny transmission service or to offer transmission service on a basis that is inferior to that which they provide to themselves.[8] Concluding that unduly discriminatory and anticompetitive practices existed in the electric industry and that, absent Commission action, such practices would increase as competitive pressures in the industry grew, the Commission in Order No. 888 required all public utility transmission providers that own, control, or operate transmission facilities used in interstate commerce to have on file an open access, non-discriminatory transmission tariff that contains minimum terms and conditions of non-discriminatory service. As relevant here, the *pro forma* OATT contains terms for scheduling transmission service and the provision of ancillary services.

7. The Commission later turned its attention to the process by which large generators interconnect with the interstate transmission system. In Order No. 2003, the Commission concluded

[3] *See, e.g.,* Joint Initiative at 1–12 (describing collaborative efforts in the Western Interconnection for high-value and cost-effective regional products involving increased coordination among different transmission providers), SMUD at 8–12 (describing SMUD's participation in regional efforts in California and the Northwest), ISO/RTO Council at 12–18 (discussing ISO/RTO efforts to develop and incorporate VER forecasting into their system operations).

[4] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 5, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[5] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663 (requiring that generator imbalance provisions account for the special circumstances presented by intermittent generators).

[6] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 690.

[7] 16 U.S.C. 824d, 824e.

[8] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,682 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

that there was a pressing need for a single set of procedures and a single, uniformly applicable interconnection agreement for large generator interconnections.[9] Accordingly, the Commission adopted standard procedures (the Large Generator Interconnection Procedures or LGIP) and a standard agreement (the Large Generator Interconnection Agreement or LGIA) for the interconnection of generation resources greater than 20 MW.[10] These reforms were designed to minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.[11]

8. In Order No. 2003–A, the Commission explained that the interconnection requirements adopted in Order No. 2003 were based on the needs of traditional synchronous generators and that a different approach may be appropriate for generators relying on newer technology.[12] The Commission therefore exempted wind resources from certain sections of the LGIA and added Appendix G to the LGIA, as a placeholder for the inclusion of interconnection standards specific to newer technologies.[13] Subsequently, in Orders Nos. 661 and 661–A, the Commission adopted a package of interconnection standards applicable to large wind generators for inclusion in Appendix G of the LGIA.[14]

9. More recently, in recognition of the evolving energy industry and in a further effort to remedy the potential for undue discrimination, the Commission revised and updated the *pro forma* OATT in Order No. 890.[15] Among other things, the Commission adopted a set of transmission planning principles,[16] created a new *pro forma* ancillary service schedule designed to address energy imbalances caused by generators,[17] and instituted a new conditional firm transmission product.[18]

10. As these and other reforms illustrate, the Commission routinely evaluates the effectiveness of its regulations and policies in light of changing industry conditions. Consistent with this practice, the Commission issued the Integrating VERs NOI on January 21, 2010 to better understand the challenges associated with the large-scale integration of VERs on the interstate transmission system and the extent to which existing operational practices may be imposing barriers to their integration.[19] The Commission explained that the changing characteristics of the nation's generation portfolio compelled a fresh look at existing policies and practices.[20] Therefore, in the Integrating VERs NOI, the Commission sought comments on the following subject areas: (1) Power production forecasting, including specific forecasting tools and data and reporting requirements; (2) scheduling practices, flexibility, and incentives for accurate scheduling of VERs; (3) forward market structure and reliability commitment processes; (4) balancing authority area coordination and/or consolidation; (5) suitability of reserve products and reforms necessary to encourage the efficient use of reserve products; (6) capacity market reforms; and (7) redispatch and curtailment practices necessary to accommodate VERs in real time.[21]

11. The response from commenters was significant, with more than 135 entities submitting comments that responded to some or all of the questions posed by the Commission.[22] A number of commenters, especially from the VER industry, argue that there is a clear need for the Commission to undertake basic reforms, and they urge the Commission to do so.[23] At the same time, a common theme expressed by a number of commenters is that different parts of the country face different challenges associated with the integration of VERs.[24] For example, commenters in the Northwest tend to focus on the difficulties posed by the deployment of wind resources,[25] whereas commenters in the Southwest tend to focus on the difficulties posed by the deployment of solar resources.[26] Further still, commenters in the South explain that in many areas the geography and regional conditions are less suitable to the development of significant wind and solar resources.[27] Commenters therefore express a need for flexibility in responding to these challenges and urge the Commission to take this need into account in crafting any proposed rules.[28]

III. The Need for Reform

12. The Commission preliminarily finds that the package of reforms proposed herein is needed to protect against unjust and unreasonable rates, terms, and conditions and undue discrimination in the provision of Commission-jurisdictional services. Specifically, the Commission is proposing to reform the *pro forma* OATT to ensure that the services provided are not structured in an unduly discriminatory manner, that public utility transmission providers have access to needed information to facilitate the integration of VERs, and that transmission customers have a clear understanding of the determination of and obligations for the provision of ancillary services.[29] The Commission believes that this set of proposed reforms represents a reasonable foundation upon which public utility transmission providers will be well positioned to manage system variability associated with increased numbers of

[9] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 11 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (DC Cir. 2007).

[10] *Id.*

[11] *Id.*

[12] Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160 at P 407 n.85.

[13] *Id.*

[14] *Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,186 (2005), *order on reh'g,* Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005).

[15] Order No. 890, FERC Stats. & Regs. ¶ 31,241, order on reh'g, Order No. 890–A, FERC Stats. & Regs. ¶ 31,261, *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299, *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126.

[16] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 435–43.

[17] *Id.* P 663–72.

[18] *Id.* P 911–15.

[19] Integrating VERs NOI, 130 FERC ¶ 61,053 at P 9.

[20] *Id.*

[21] *Id.* P 12.

[22] *See* Appendix A.

[23] AWEA at 2; Iberdrola at 8–10; NextEra 2–8.

[24] Southern at 3; EEI at 2; ISO/RTO Council at 2.

[25] *See, e.g.,* NorthWestern at 4–6; Idaho Power at 2–4; Puget at 2.

[26] *See, e.g.,* NV Energy at 2, 6; Southern California Edison at 7.

[27] *See, e.g.,* Southern at 19.

[28] Southern at 4–10; EEI at 2; ColumbiaGrid at 4–5.

[29] As part of this Proposed Rule, the Commission is also proposing a minor revision to 18 CFR 35.28. To date, when amending its regulations concerning the *pro forma* OATT, the Commission has listed by name Commission rulemaking proceedings promulgating and amending the *pro forma* OATT when explaining the details of a public utility transmission provider's obligation to have an OATT on file with the Commission (as indicated by, e.g., proposed regulatory text included in another recently issued Notice of Proposed Rulemaking: *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* 131 FERC ¶ 61,253 (2010)). This process is increasingly cumbersome. Thus as part of this Proposed Rule, the Commission proposes to no longer explicitly reference, by name, prior Commission rulemaking proceedings promulgating and amending the *pro forma* OATT in its regulations. Likewise, the Proposed Rule includes a similar change with respect to a public utility transmission provider's obligation to have standard generator interconnection procedures and agreements and standard small generator interconnection procedures and agreements on file with the Commission.

VERs. The Commission anticipates that the proposed operational and pricing reforms will result in a more efficient utilization of all generation, non-generation,[30] and transmission resources and lay the basis for continued development, including the possibility of innovative solutions, such as efforts by the Joint Initiative in the West.

13. As noted in the Integrating VERs NOI, the composition of the electric generation portfolio is changing. VERs are making up an increasing percentage of new generating capacity being brought on line—in 2009, new wind generating capacity rose to 9,994 MW, or 39 percent of all newly installed generating capacity, bringing total wind generating capacity to more than 35,000 MW.[31] In addition to this existing capacity, another 85 GW of wind generating capacity has been proposed to be on line by the end of 2012.[32] The amount of new solar generating capacity also has increased in recent years, adding 351 MW in 2008 and 481 MW in 2009, bringing the total solar generating capacity to more than 2,000 MW.[33]

14. The Commission expects the number of VERs, both in real numbers and as a percentage of total generation capacity, to continue to grow. Indicators of this anticipated growth are suggested by the significant number of public policies, both at the state and federal levels, encouraging the development of VERs. In the Integrating VERs NOI, the Commission noted that as of December 2009, 30 states and the District of Columbia had a renewable portfolio standard.[34] Moreover, federal tax policies that provide incentives to the development of renewable generation facilities have been in place for a number of years. For example, the federal production tax credit, which has been in effect intermittently since the early 1990s, provides an inflation-adjusted credit for power produced from VERs and other renewable resources.[35] In February 2009, the American Recovery and Reinvestment Act (ARRA) not only extended the production tax credit for a period of three additional years,[36] but also instituted an investment tax credit, which allows developers of certain renewable generation facilities to take a 30 percent cash grant in lieu of the production tax credit.[37] Other federal policies that provide incentives to renewable generation facilities include accelerated depreciation of certain renewable generation facilities and loan guarantee programs.

15. The Commission has recognized this policy development, not only in this proceeding, but also in the Transmission Planning and Cost Allocation Proposed Rule, observing that "state policies to promote increased reliance on renewable energy resources, such as the renewable portfolio standard measures discussed above, accentuate the need for transmission to deliver electricity from location-constrained renewable energy resources to load centers."[38] The same observation is true for the operational reforms proposed here. Public policies that promote renewable resources accentuate the need for reforms to operational protocols that unduly discriminate against VERs and/or have the effect of maintaining rate structures that are no longer just and reasonable.

16. As the number of VERs has increased, the Commission has received a variety of proposals that seek variations from the *pro forma* OATT and/or LGIA in order to address system needs resulting from the integration of VERs. In recent years, a number of public utility transmission providers have proposed to assess various forms of ancillary services charges to wind generating resources, while others have proposed revised interconnection standards addressing reporting requirements and additional ancillary service obligations.[39] Consistent with many of the comments received in response to the Integrating VERs NOI, such filings suggest that the *pro forma* OATT and LGIA may need adjustments to address operational issues arising in response to the increased integration of VERs in individual balancing authority areas.

17. In light of these filings, comments, and the increasing deployment of VERs on the nation's transmission system, the Commission has identified reforms that it preliminarily finds would eliminate operational procedures that have the *de facto* effect of imposing an undue burden on VERs. The proposed reforms acknowledge that existing practices as well as the ancillary services used to manage system variability were developed at a time when virtually all generation on the system could be scheduled with relative precision and when only load exhibited significant degrees of within-hour variation. In proposing these reforms, the Commission seeks to ensure that VERs are integrated into the transmission system in a coherent and cost-effective manner, consistent with open access principles.

18. The Commission is aware that, in many instances, issues associated with VER integration are highly technical in nature and can vary significantly from one region to the next. The Commission is also cognizant of and supports ongoing industry initiatives dedicated to crafting regional solutions to the challenges associated with VER integration. Such regional efforts include the work being conducted by the North American Electric Reliability Corporation (NERC) through the Integration of Variable Generation Task Force[40] and the work of the Joint Initiative.[41] As such, the reforms proposed here do not purport to resolve all of the challenges associated with VER integration, nor are they intended to undermine progress being made in various regions regarding VER integration. The Commission's goal in this proceeding is simply to identify those basic reforms that can and should be implemented in the near term. The Commission believes that the reforms

[30] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 888 (modifying Schedules 2, 3, 4, 5, 6, and 9 of the *pro forma* OATT to indicate that the ancillary services provided in those rate schedules may be provided by generating units as well as other non-generation resources such as demand response where appropriate).

[31] Ryan Wiser & Mark Bolinger, Lawrence Berkeley National Laboratory, *2009 Wind Technologies Market Report* 3–5 (2010), *available at http://www1.eere.energy.gov/windandhydro/pdfs/2009_wind_technologies_market_report.pdf.*

[32] Div. of Energy Market Oversight, Fed. Energy Regulatory Comm'n, *2009 State of the Markets Report* (2010), available at *http://www.ferc.gov/market-oversight/st-mkt-ovr/som-rpt-2009.pdf.*

[33] Solar Energy Industries Ass'n, *US Solar Industry Year in Review* 2009, at 2, *available at http://seia.org/galleries/default-file/2009%20Solar%20Industry%20Year%20in%20Review.pdf.*

[34] *See* Integrating VERs NOI, 130 FERC ¶ 61,053 at P 2 (citing Div. of Energy Market Oversight, Fed. Energy Regulatory Comm'n, *Renewable Power and Energy Efficiency Market: Renewable Portfolio Standards 1 (2009), available at http://www.ferc.gov/market-oversight/othr-mkts/renew/othr-rnw-rps.pdf*).

[35] 26 U.S.C. 45.

[36] American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111–5, sec. 1101, 123 Stat. 115, 319 (2009).

[37] *Id.* sec. 1102, 123 Stat. 115, 319–20.

[38] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* 131 FERC ¶ 61,253, at P 36 (2010) (Transmission Planning and Cost Allocation Proposed Rule).

[39] *See, e.g., NorthWestern Corp.,* 129 FERC ¶ 61,116 (2009) (*NorthWestern*), *order on reh'g,* 131 FERC ¶ 61,202 (2010); *Westar Energy Inc.,* 130 FERC ¶ 61,215 (2010) (*Westar*); *Cal. Indep. Sys. Operator Corp.,* 131 FERC ¶ 61,087 (2010); *Puget Sound Energy, Inc.,* 132 FERC ¶ 61,128 (2010) (*Puget Sound*).

[40] *See* North American Elec. Reliability Corp., *Accommodating High Levels of Variable Generation* (2009), *available at http://www.nerc.com/files/IVGTF_Report_041609.pdf.*

[41] *See* Joint Initiative at 3–11 (describing projects currently being developed by members of Columbia Grid, Northern Tier Transmission Group and WestConnect such as an Intra-Hour Transaction Accelerator Platform and a Dynamic Scheduling System).

proposed herein can and should be implemented in a way that complements ongoing stakeholder proceedings.

IV. Summary of Proposed Reforms

19. The Commission is proposing three reforms that, taken together, are designed to address issues confronting public utility transmission providers and VERs and to allow for the more efficient utilization of transmission and generation resources to the benefit of all customers. First, the Commission proposes to provide the transmission customer with the option of using more frequent transmission scheduling intervals within each operating hour, at 15-minute intervals, so that they may adjust their transmission schedules to reflect, in advance of real-time, more accurate power production forecasts, load profiles, and other changing system conditions. At the same time, this proposed reform will enable public utility transmission providers and other entities to manage the system's variability more effectively and, over time, rely less on ancillary services and more on the flexibility of generation and non-generation resources.

20. Second, the Commission proposes to require public utility transmission providers to amend their *pro forma* LGIAs to incorporate provisions requiring interconnection customers whose generating facilities are VERs to provide certain meteorological and operational data to public utility transmission providers to facilitate public utility transmission providers' development and deployment of VER power production forecasting tools. Under the LGIA provisions proposed here, the interconnection customer whose generating facility is a VER would only be required to provide such data in the instance where the interconnecting public utility transmission provider is developing and/or deploying VER power production forecasting tools.

21. Third, the Commission proposes to add a generic ancillary service rate schedule to the *pro forma* OATT through which a public utility transmission provider must offer generator regulation service, to the extent it is physically feasible to do so from its resources or from resources available to it, to transmission customers using transmission service to deliver energy from a generator located within the transmission provider's balancing authority area. Under this proposed rate schedule, a public utility transmission provider will have the opportunity to recover reserve service costs associated with management of supply-side variability. In Order No. 890, the Commission took a case-by-case approach to filings by public utility transmission providers seeking to recover the costs of additional regulation reserves associated with providing generator imbalance service.[42] This existing policy, however, has led to uncertainty and allows the potential for undue discrimination. To prevent this uncertainty and potential undue discrimination, we believe it is appropriate now to propose a generic generator regulation reserve rate schedule that will delineate the rights and obligations of public utility transmission providers and customers with respect to the provision of this service.

22. Additionally, the Commission is proposing guidelines under which public utility transmission providers may assess generator regulation reserve charges to transmission customers. Such charges must be established based on traditional cost causation principles. To the extent a public utility transmission provider proposes to require transmission customers who are delivering energy from VERs to purchase, or otherwise account for, a different volume of generator regulation reserves than it proposes to charge transmission customers delivering energy from other generating resources, such differing volumes must be shown to be commensurate with the variability that VERs exhibit on the transmission provider's system. Furthermore, the public utility transmission provider must show that it has adopted measures to mitigate the total amount of regulation reserve necessary to manage the variability through the implementation of VER power production forecasting and intra-hourly scheduling. This mitigation requirement will help to ensure that the rates for this service are just and reasonable.

23. Through these three proposals, the Commission seeks to reform operational protocols that present barriers to the integration of VERs and to ensure the cost of integrating new resources, such as VERs, are not unnecessarily inflated by inappropriate systems and processes. While the proposed reforms focus on discrete operational protocols, they are integrally related and should be understood as complementary parts of a package. The Commission believes this set of reforms will help to level the playing field for all types of resources, provide much-needed clarification as to the roles and responsibilities of public utility transmission providers and transmission customers, and bring greater transparency and efficiency to existing system operations. As described in more detail below, the Commission believes that these proposed rules are necessary to remedy undue discrimination in existing transmission system operations and to ensure that rates for Commission-jurisdictional services are just and reasonable.

24. As should be clear from the scope of this Proposed Rule, the Commission is not proposing to address the additional issues identified in the Integrating VERs NOI at this time. Upon review of the comments, the Commission believes that further study of many issues identified in the Integrating VERs NOI is required. In addition, a number of parties are actively developing solutions to address issues raised in the Integrating VERs NOI.[43] Therefore, in keeping with the suggestion of a number of commenters to allow individual regions to continue to develop solutions to the challenges unique to their characteristics and resources, and in recognition of commenters who seek Commission engagement on these issues, the Commission proposes to instruct its staff to monitor and conduct outreach with industry stakeholders to keep abreast of developments.

V. Proposed Reforms

A. Intra-Hourly Scheduling

25. Outside of regions that have an RTO or ISO, resources typically

[42] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 689 n.401, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 313. More recently, the Commission clarified transmission providers' obligation to offer generator regulation service by rejecting a transmission provider's proposal to require VERs exporting out of the transmission provider's balancing authority area to provide or arrange for their own generator regulation capacity. *See NorthWestern,* 129 FERC ¶ 61,116 at P 24 (finding that the proposal to disclaim the obligation to provide the capacity reserves necessary to providing generator imbalance service would be inconsistent with the transmission provider's obligation to offer generator imbalance service set forth in the *pro forma* OATT).

[43] *See, e.g.,* Joint Initiative at 7–12 (explaining ongoing efforts in the West to develop a dynamic scheduling system and intra-hour transaction accelerator platform to facilitate transactions among balancing authorities); ISO/RTO Council at 44 (indicating that ISOs and RTOs have begun to integrate centralized forecasting into reliability commitment processes); NERC, *Integration of Variable Generation Task Force, 2009–2011 Work Plan (2009), available at http://www.nerc.com/docs/pc/ivgtf/IVGTF_Work_%20Plan_111309.pdf* (detailing on-going efforts to establish mechanisms to calculate the capacity associated with VERs). *See also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1626–27 (requiring transmission providers to use an OASIS template that will be developed by the North American Energy Standards Board to post information concerning curtailments, including the circumstances and events leading to a firm service curtailment, specific customers and services curtailed, and the duration of the curtailment).

schedule transmission service on an hourly basis, and adjustments to such schedules are permitted during the hour only for emergency situations that threaten reliability.[44] In the Integrating VERs NOI, the Commission noted that existing scheduling practices were designed at a time when virtually all generation on the system could be scheduled with relative precision.[45] The Commission also acknowledged that, with increasing numbers of VERs, system operators appear to be relying more on reserves, such as regulation reserves, to balance the variation in energy output from VERs.[46]

26. The Commission further explained that because transmission schedules are typically set 20–30 minutes ahead of the hour, the forecast of a VER's output (upon which its schedule is based) may be 90 minutes old by the end of the operating hour.[47] As a result, because of a resource's limited ability to adjust its schedules during the hour, the operational flexibility of all resources on the transmission provider's system may not be utilized.[48]

27. Therefore, the Commission sought to explore whether the retention of existing transmission scheduling practices had caused the rates for reserves to become unjust and unreasonable by inhibiting the ability of VERs to establish operationally-viable schedules and preventing public utility transmission providers from utilizing the flexibility of their systems. More specifically, the Commission sought to explore whether greater transmission scheduling flexibility, such as intra-hour scheduling or other improvements in the scheduling procedures, might offer the potential for greater efficiency in dispatching all resources. For instance, the Commission noted the potential for more efficient dispatch if the magnitude of schedule deviations could be reduced, better anticipated, and/or planned for more precisely.[49]

1. Comments

28. Most commenters recognize the benefits and support the implementation of some form of intra-hour transmission scheduling. AWEA states that shorter scheduling intervals will allow generators to provide inexpensively much of the flexibility that is currently being provided by expensive regulation reserves.[50] AWEA points out that the Avista Wind Integration Study similarly found wind integration costs would be reduced by 40–60 percent by moving from hourly to intra-hourly dispatch intervals.[51] Additionally, AWEA asserts that Bonneville has publicly stated that wind integration costs on its system would be reduced by 80 percent by moving from hourly schedules to intra-hourly schedules.[52] Bonneville states that intra-hour scheduling has the potential to help better manage the costs and operational impacts of VER generator imbalances.[53]

29. WECC explains that shorter scheduling intervals allow system operators to manage the integration of VERs more efficiently, because they permit the use of forecasts that are closer to the operating time frame, and are therefore more accurate.[54] EEI states that for regions with significant amounts of VERs, it appears that shorter intervals would allow system operators to manage VER ramp events [55] and variability, provide more accurate scheduling, reduce the reliance on regulating reserves and make it easier to meet NERC CPS–2.[56] NERC claims that while additional system flexibility can come from many sources, such as the availability of flexible conventional resources and non-conventional resources such as storage and demand response programs, an additional contributor to greater system flexibility includes shorter scheduling intervals, for both within a balancing authority area and between balancing authority areas.[57] Joint Initiative states that allowing transmission customers to schedule transactions within an operating hour increases operating flexibility for VERs and the rest of the system.[58] NERC claims that the ideal scheduling increments to achieve optimum flexibility while still meeting relevant reliability requirements may be between five and fifteen minutes; however, this depends on system characteristics, the type of VERs present on the system, and the level of VER penetration.[59]

30. AWEA argues that hourly scheduling practices have a much greater negative impact on VERs than on traditional dispatchable resources and that it is within the Commission's statutory duty to address these issues of discrimination.[60] AWEA notes that shorter scheduling intervals will yield significant benefits even on transmission systems without wind energy, as there is significant intra-hour variability in load, as well as in the output of non-VER resources when they experience forced outages or otherwise fail to provide their scheduled output.[61] AWEA also contends that moving to shorter dispatch intervals will actually improve power system reliability by freeing up additional system flexibility that is currently underutilized.[62] Iberdrola argues that the Commission should modify its *pro forma* OATT to require, at a minimum, intra-hourly scheduling of generation, explaining that intra-hour scheduling will improve VER scheduling accuracy and reduce VER integration costs.[63] Southern California Edison argues that the Commission should ensure that new scheduling tools, such as half-hour scheduling intervals, are available, as these could help reduce forecast errors, and in turn, result in optimal transmission utilization, market efficiency, and system reliability.[64] Southern California Edison also explains that, because it does not expect reliability issues to arise from scheduling rule changes, NERC Reliability Standards will require minimal or no changes.[65]

31. Many commenters, however, seek the flexibility to develop regional solutions without a Commission mandate that they be required to do so. The common reason given for this view is that each region has a unique mix of conventional generation resources and VERs, and each region should be

[44] Section 13.8 of the *pro forma* OATT requires transmission customers to schedule use of firm point-to-point transmission service by 10:00 a.m. the day prior to operation. That section also gives the transmission provider the discretion to accept schedule changes no later than 20 minutes prior to the operating hour.

[45] Integrating VERs NOI, 130 FERC ¶ 61,053 at P 18.

[46] *Id.*

[47] *Id.* P 19.

[48] *Id.*

[49] *Id.* P 18–21.

[50] AWEA at 38 (citing M. Milligan & B. Kirby, *Impact of Balancing Area Size, Obligation Sharing, and Ramping Capability on Wind Integration,* 27–29 (2007), *available at http://www.nrel.gov/wind/systemsintegration/pdfs/2007/milligan_wind_integration_impacts.pdf*).

[51] AWEA at 20 (citing Avista Corp., *Wind Integration Study* (2007), *available at http://www.uwig.org/AvistaWindIntegrationStudy.pdf*).

[52] AWEA at 20 (citing Presentation by Bart McManus, Bonneville. *Large Wind Integration Challenges and Solutions for Operations/System Reliability* at slide 26 (Oct. 2008), *available at http://www.uwig.org/Denver/McManus.pdf*) (stating 10 minute schedule changes would solve approximately 80% of the issues Bonneville is anticipating).

[53] Bonneville at 6.

[54] WECC at P 6.

[55] Ramp events are instances where the generating facility experiences a significant change in electrical output.

[56] EEI at 9.

[57] NERC at 16.

[58] Joint Initiative at 3.

[59] NERC at 17–18.

[60] AWEA at 16.

[61] *Id.* at 38.

[62] *Id.* at 40.

[63] Iberdrola at 10.

[64] Southern California Edison at 10–11.

[65] Southern California Edison at 12.

allowed to explore and coordinate its own scheduling practices to suit its unique system needs through stakeholder processes. For example, EEI states that in light of the variation in market structures and rules throughout the country, it is unlikely that any single scheduling practice will suit all regions.[66] EEI argues that the Commission should allow each region to explore its own flexible scheduling options and provide policy guidance that encourages flexible scheduling practices to the maximum extent possible.[67] Bonneville argues that mandating intra-hour scheduling or standardizing national practices is premature.[68] The ISO/RTO Council supports moving toward intra-hour scheduling across the inter-ties for purposes of VER integration where warranted by system needs.[69]

32. Additionally, several of the commenters that oppose a Commission mandate to implement intra-hour scheduling cite reform efforts that are already underway. For example, the Joint Initiative describes its development of model intra-hour transmission purchase and scheduling business practices in the Western Interconnection.[70] The Joint Initiative also explains that a number of utilities in the Northwest have begun to implement these practices to one degree or another.[71] SMUD points out that the Western Systems Power Pool currently seeks to develop two new service schedules that will accommodate VERs through the provision of reserve services and intra-hour supplemental energy. For this reason, SMUD argues that the Commission should avoid taking actions where industry efforts are in progress to cost-effectively achieve similar goals, particularly when those efforts are further taking into account regional characteristics.[72]

33. Commenters generally recognize that the implementation process is not without some costs. AWEA states that the cost of transitioning to intra-hourly dispatch is quite modest and the bulk of these costs are up-front expenditures while the benefits of making the transition will be realized in perpetuity.[73] AWEA explains that the costs associated with the transition to an intra-hourly dispatch include: (1) Modifications of dispatch/energy management and NERC e-Tag systems in order to accommodate intra-hour schedules/settlements, (2) OATT revisions necessary to accommodate transmission reservations for periods of less than a full clock hour, and (3) possible staffing increases to handle the greater number of transactions.[74]

34. Entergy states that it moved from hourly scheduling to twenty-minute anytime-scheduling several years ago.[75] According to Entergy, no changes to the OATT, e-Tag or NERC rules were required.[76] Entergy states that its scheduling systems were significantly modified to implement this additional flexibility, but such changes have proven to be manageable to date. Entergy cautions that if intra-hour scheduling is mandated, the burden on the system operators may increase, such as when there are reliability issues on the system.[77] Entergy explains that at these times, system operators would have to handle intra-hour schedules and reliability issues simultaneously.[78] Therefore, Entergy asks the Commission to proceed carefully and consider differences among balancing authority areas, in terms of software, manpower, and scheduling work load, before mandating intra-hour scheduling.[79] Similarly, Northwestern argues that system automation will be necessary to allow much greater number of schedules and transmission service requests to be processed without impacting reliability.[80] National Rural Electric Cooperative Association (NRECA) claims that a number of NERC standards would need to be reviewed to determine the impacts of a move towards flexible scheduling.[81]

35. Smaller public utility transmission providers highlight challenges with respect to their size and explain that the implementation of intra-hour scheduling may be infeasible for certain entities. NRECA indicates that for smaller systems, implementation of intra-hour scheduling would be a significant additional burden and could require substantial costs in software modification.[82] NRECA explains that while changes to infrastructure required for trading may be absorbed by large entities, smaller cooperatives would be affected disproportionately because of their inability to spread the costs over the large volume of trade.[83] NRECA claims that in any cost-benefit analysis, it is less likely that smaller entities will benefit, even over time, especially where they lack a large customer base, which is the case for many rural electric cooperatives.[84] Consequently, NRECA contends that intra-hour scheduling is simply infeasible for some of its members at this time.[85]

36. Finally, some commenters oppose the implementation of intra-hour scheduling for their regions regardless of cost or whether the Commission allows for regional differences. Generally, these commenters base their objections on two grounds. First, commenters under the impression that the intra-hour scheduling would be available only to transmission customers using VERs argue that it would be unfair to afford scheduling opportunities to one class of transmission customers and not others, such as those utilizing conventional resources. Southern argues that there should not be any unique or special scheduling protocols applicable to only certain types of generation.[86] Second, commenters argue that the responsibility for scheduling efficiency should fall on VERs. These commenters generally argue that VERs should be required to maintain the accuracy of their schedules and should not expect public utility transmission providers to change scheduling practices that have worked in the past. Altresco states that maintaining scheduling practices is essential to the reliability of the grid, and that VERs should take responsibility for the reliability impact of the variability of their resource.[87] Southern states that all generators (including VERs) should be responsible for providing accurate schedules and that the risk and responsibility for forecasting availability should always be the generator's responsibility and should not be shifted to the public utility transmission provider or system operator.[88]

[66] EEI at 8.

[67] *Id.* at 9.

[68] Bonneville at 44.

[69] ISO/RTO Council at 36.

[70] Joint Initiative at 4.

[71] *Id.* at 5–6 (citing sub-hourly scheduling initiatives by the following: NV Energy, PacifiCorp, Bonneville, Puget, Portland General Electric, Avista Corp., Seattle City Light, Chelan County PUD, Grant County PUD, and Tacoma Power).

[72] SMUD at 20.

[73] AWEA at 39.

[74] *Id.*

[75] Entergy at 2.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] NorthWestern at 14.

[81] NRECA at 30 (citing BAL (Resource and Demand Balancing), INT (Interchange Scheduling and Coordination), IRO (Interconnection Reliability Operations and Coordination), and MOD (Modeling, Data, and Analysis) Standards).

[82] NRECA at 28.

[83] *Id.* at 29.

[84] *Id.*

[85] *Id.*

[86] Southern at 11.

[87] Altresco at 5–6.

[88] Southern at 11.

2. Commission Discussion

37. The Commission preliminarily finds that hourly transmission scheduling protocols are no longer just and reasonable and may be unduly discriminatory as the default scheduling time periods required by the *pro forma* OATT. Specifically, we preliminarily find that existing hourly transmission scheduling protocols expose transmission customers to excessive or unduly discriminatory generator imbalance charges and are insufficient to provide system operators with the flexibility to manage their system effectively and efficiently. Therefore, the Commission proposes to amend sections 13.8 and 14.6 of the *pro forma* OATT to provide transmission customers the option to schedule transmission service on an intra-hour basis, at intervals of 15 minutes.[89] The Commission notes that the proposed 15-minute interval is consistent with the ideal time increments (*i.e.,* 5 to 15 minutes) recommended by NERC to achieve greater flexibility while still meeting relevant reliability requirements.[90] Additionally, the Commission notes that many commenters claim that shorter scheduling intervals may enhance system reliability.[91] As such, we do not believe, as NRECA suggests, that an independent review of NERC standards is necessary to making this proposed reform. However, the Commission seeks comment on the issue to ensure that there is no inconsistency among relevant NERC standards and the proposed intra-hour scheduling tariff reform.

38. As explained above, hourly transmission scheduling protocols were developed at a time when virtually all generation on the system could be scheduled with relative precision.[92] The resulting net system variability, i.e., the net variation between the load and generator imbalance, was such that hourly scheduling protocols were sufficient to maintain system balance. As higher amounts of VERs interconnect with the grid, these hourly scheduling protocols make it increasingly difficult for public utility transmission providers and balancing authorities to maintain system balance.[93] In order to accommodate any increased intra-hour supply-side variability caused by increasing numbers of VERs, public utility transmission providers in areas without organized real-time energy markets rely on reserve services, which are provided under a number of existing ancillary service rate schedules.[94]

39. The Commission believes that it is unduly discriminatory to perpetuate the practice for resources to match hourly transmission schedules, especially when the output of a resource (such as a VER) fluctuates beyond its reasonable control. Moreover, the Commission believes that requiring public utility transmission providers to procure ancillary services to manage generating resources' deviations across an operating hour is an inefficient and burdensome operating protocol with the potential to result in unjust and unreasonable rates. Therefore, in order to prevent excessive costs attributable to reserve services, an over-reliance on these reserve services in maintaining overall system balance, and undue discrimination against VERs, the Commission proposes to reform existing transmission scheduling practices. Under this proposed reform, all transmission customers will have the opportunity to take advantage of the shorter scheduling intervals and submit accurate intra-hour schedules, thereby mitigating the amount of regulation reserves or other ancillary services public utility transmission providers will need to procure.

40. The Commission expects this proposed reform to benefit many types of entities. For example, with shorter scheduling intervals, public utility transmission providers should have greater assurance that the schedules submitted by transmission customers using VERs are accurate. Therefore, these public utility transmission providers will be in a better position to anticipate and respond to fluctuations in VER energy production. In this way, the public utility transmission provider will be able to rely more on planned scheduling and dispatch procedures in maintaining overall system balance and rely less on reserves. At the same time, transmission customers delivering energy from VERs will be in a reasonable position to match their scheduled output with actual output, thereby managing their exposure to generator imbalance charges. Likewise, transmission customers delivering energy from energy constrained resources, such as flow-limited hydro generators, emission-limited thermal generators, demand response resources and energy storage resources will be better able to schedule transmission to reflect constraints in their operations. In addition, increased scheduling flexibility should help balancing authorities to more closely match scheduled production with actual output, which will enhance their ability to meet NERC Reliability Standards.

41. Accordingly, the Commission proposes to require public utility transmission providers to offer all transmission customers the option to submit changes to schedules in an interval of 15 minutes and allow all transmission customers the option of submitting intra-hour schedules up to 15 minutes before the scheduling interval. While the Commission proposes to establish a 15-minute scheduling interval, this proposed reform is not intended to deter public utility transmission providers from providing transmission scheduling intervals that are less than the proposed 15-minute period. To the extent public utility transmission providers incur costs as a result of implementing this proposed scheduling reform, the Commission proposes to allow such costs to be recovered pursuant to Schedule 1 of the transmission providers' OATTs.

42. The Commission acknowledges that a number of public utility transmission providers already have begun implementing intra-hour scheduling practices, primarily through reforms to their business practices.[95] While these individual reforms are important steps toward the efficient integration of VERs, the Commission believes that it is important to establish 15-minute scheduling periods as the default scheduling process among transmission providers. Because VERs tend to be located far from load centers, energy produced from VERs in one region is often sold to load serving entities in another region, requiring transmission service spanning one or more systems. The Commission believes that the proposed 15-minute scheduling protocols will benefit transmission customers delivering energy across multiple systems by allowing them to schedule energy on more than one system at similar intra-hour scheduling intervals that are in no event less than four times within the hour. In this way,

[89] The Commission's proposed reform allows for intra-hour scheduling adjustments; it does not propose changes to the hourly transmission service reservations provided in the OATT.

[90] NERC at 17–18.

[91] NERC at 20, AWEA at 40, EEI at 29, Southern California Edison at 11–12, CalWEA at 7, Pacific Gas and Electric at 6, NaturEner at 11, and Wärtsilä at 7.

[92] *See* Integrating VERs NOI, 130 FERC ¶ 61,053 at P 18.

[93] Bonneville at 45.

[94] Order No. 888, FERC Stats. & Regs. at 31,703–704.

[95] See Joint Initiative at 5–6 (citing sub-hourly scheduling initiatives by the following: NV Energy, PacifiCorp, Bonneville, Puget, Portland General Electric, Avista Corp., Seattle City Light, Chelan County PUD, Grant County PUD, and Tacoma Power).

the proposed 15-minute scheduling protocols will afford transmission customers using multiple systems the same flexibility as those using only one transmission system. Such intra-hour scheduling intervals also could lay the groundwork for the development of flexible energy and/or capacity products, thereby reducing the need for public utility transmission providers to rely on ancillary services to manage the variability of VERs.

43. At the same time, the Commission acknowledges arguments that regional differences should be respected when developing an implementation process and that any Commission action should not negatively affect ongoing industry efforts. In this regard, the Commission seeks comment on the best approach for implementing the intra-hour scheduling reforms proposed here. The Commission recognizes that an optimal implementation approach should support ongoing industry efforts and may consider regional differences, such as the amount of VERs present in that region. In proposing implementation approaches, commenters should consider any impacts on transmission customers scheduling across multiple systems and whether these impacts diminish the benefits of implementing intra-hour scheduling.

44. Finally, several commenters point out that hardware, software, and personnel modifications may be required in order to implement intra-hour transmission scheduling. To more fully understand the modifications that this proposed reform may require, the Commission seeks more detailed comment on the specific hardware, software, and personnel changes that are necessary to implement intra-hour scheduling, any additional impacts on relatively small public utility transmission providers, and how to best facilitate this reform for small public utility transmission providers.

B. Power Production Forecasting and Data Reporting

45. Research has shown that VERs power production forecasts are essential in managing the variability of VERs and, equally importantly, the use of these forecasting methodologies enhances economic efficiency and allows transmission providers to manage the operational effects of VERs on their transmission system.[96] Detailed and timely power production forecasts are critical to reducing uncertainty regarding the expected level of VER power output at various points in time.[97] By reducing uncertainty, power production forecasts give transmission providers an improved situational awareness of their transmission systems. These power production forecasting tools also provide transmission providers with the advanced knowledge of system conditions needed to manage the variability of VER generation through the unit commitment and dispatch process, rather than managing the variability through the deployment of reserve services, such as regulation reserves. With situational awareness of forecasted variability, the transmission provider and/or balancing authority can commit or de-commit resources providing regulation reserves, to the extent and when they will be needed to maintain system reliability.[98] NREL's *Western Wind and Solar Integration Study* found that, while state-of-the-art power production forecasting for VERs may be imperfect, it is still beneficial to incorporate such forecasts into the existing scheduling and unit commitment processes. Additional research indicates that the accuracy of wind power forecasts is directly connected to the amount of balancing energy needed and hence the cost of wind power integration.[99] In WECC alone, NREL estimates that the use of VER power production forecasts has the potential to reduce operating costs by up to 14 percent or $5 billion per year.[100]

46. In SPP [101] and ERCOT,[102] studies have been commissioned that recommend the use of VER power production forecasting in unit commitment and reliability assessment analyses and the procurement of ancillary services. In Minnesota, research conducted in 2006 suggested that the failure to consider probable wind generation in the day-ahead market could result in incorrect price signals and market inefficiencies.[103]

47. Some public utility transmission providers have already instituted forecasting programs that are designed to address the variability associated with VERs. In 2004, the Commission accepted the CAISO's Participating Intermittent Resources Program (PIRP) and acknowledged the importance of centralized power production forecasting in reducing the barriers to VERs participation in the CAISO energy market.[104] To effectuate this program, CAISO is provided with the real-time operational and meteorological data necessary to forecast VER power production over a variety of time periods. VERs that participate in the PIRP are required to submit a power production schedule, through their scheduling coordinator, consistent with the CAISO's forecast of energy generation. PIRP participants are assessed a fee to defray CAISO's cost of providing this forecasting service.

48. In 2008, the Commission approved NYISO tariff revisions that implemented similar VER power production forecasting capabilities.[105] The Commission found NYISO's proposal to implement a centralized wind forecasting mechanism would allow it to predict the availability of wind resources more accurately and indicated that such a capability should reduce overall system operating costs. Similarly, both PJM and MISO have recognized the value of VER power production forecasting and have included in their respective business practice manuals centralized VER power production forecasting programs and responsibilities. Xcel states that it forecasts wind generation in its service territory in partnership with the National Center for Atmospheric Research (NCAR) using enhanced, state-of-the-art wind output prediction tools.[106] Xcel explains that while these tools require large amounts of meteorological information and turbine-level real-time operational data, migrating to this methodology has proven to be beneficial in terms of economics and reliability.[107]

49. In light of these and other acknowledgements of the benefits

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[96] NERC, Integration of Variable Generation Task Force, *Task 2.1 Report: Variable Generation Power Forecasting for Operations* 5 (2010), *available at http://www.nerc.com-/docs/pc/ivgtf/Task2-1(5.20).pdf.*

[97] *Id.* at 54. *See also* National Renewable Energy Laboratory, Eastern Wind *Integration Study* 29 (2010), *available at http://www.nrel.gov/wind/systemsintegration/pdfs/2010/ewits_final_report.pdf.*

[98] NERC at 6.

[99] Bernhard Ernst *et al.,* Predicting the Wind, IEEE Power & Energy Mag., Nov.–Dec. 2007, at 78, 79, *available at http://www.awea.org/utility/pdf/04383126predicting.pdf.*

[100] National Renewable Energy Laboratory, *Western Wind and Solar Integration Study* ES–18 (2010), *available at http://www.nrel.gov/wind/systemsintegration/wwsis.html.*

[101] Charles River Assoc., *SPP WITF Wind Integration Study* 6–19 (2010), *available at http://www.crai.com/consultingexpertise/listingdetails.aspx?id=12091&tID=828&subtID=0&tertID=0&fID=34&SectionTitle=Energy+%26+Environment.*

[102] GE Energy, *Analysis of Wind Generation Impact on ERCOT Ancillary Services Requirements* 9–7 (2008), *available at http://www.uwig.org/AttchB ERCOT_A-S_Study_Final_Report.pdf.*

[103] Enernex Corporation, *2006 Minnesota Wind Integration Study* 73–74 (2006), *available at http://www.uwig.org/windrpt_vol%201.pdf.*

[104] *Cal. Indep. Sys. Operator Corp.,* 98 FERC ¶ 61,327, *order on compliance,* 99 FERC ¶ 61,309 (2002).

[105] *New York Indep. Sys. Operator, Inc.,* 123 FERC ¶ 61,267, at P 13–14 (2008).

[106] Xcel at 3.

[107] *Id.*

associated with the increased use of VER power production forecasting in transmission system operations, the Commission sought comments in the Integrating VERs NOI on the state of VER power production forecasting in order to determine what additional tools and/or data may be necessary to incorporate increasing levels of VERs on the interstate transmission system.[108] The Commission sought information in three general areas: (1) Current VER power production forecasting efforts; (2) the data needed to create state-of-the-art power production forecasts; and (3) regulatory changes, if any, needed to incorporate power production forecasts into system operations.

1. Comments

50. In response to the Integrating VERs NOI, commenters filed detailed accounts of the current state of VER power production forecasting, and the necessary steps to incorporate state-of-the-art forecasting into system operations. Argonne National Lab's research indicates that increased levels of VERs will necessitate the incorporation of power production forecasting in unit commitment analyses to maintain system reliability.[109] NREL adds that ignoring VER power production forecasting during the unit commitment process may result in the commitment of too much or too little generating capacity and potentially generate economic losses over time.[110] NERC states that VER power production forecasts must be integrated into day-to-day reliability analyses and operations to ensure that system operators and market participants can create operating plans and procure necessary resources to keep supply and demand in balance on a real-time basis.[111] NERC explains that the goal of power production forecasting should be to identify high-risk periods where procurement of additional flexibility or reserves is justified to maintain system balance and reduce the commitment of expensive reserves when there is little risk of them being needed for reliability.[112] Commenters note that, while the goal of VER power production forecasts is to use forecasts to make better unit commitment and reliability assessment decisions, significant work is needed to develop better power production forecasts and determine how best to incorporate those forecasts into system operational decisions.[113]

51. One important clarification made by commenters is the differentiation between the underlying Numerical Weather Prediction (NWP) models and the power production forecasts used to estimate wind and solar plant power output. While government agencies like the National Oceanic and Atmospheric Administration (NOAA) are responsible for the development of the NWP models, the private sector focuses on using these models, in combination with data obtained from VERs, to develop power production forecasts tailored to the needs of individual clients (such as VERs, transmission providers and balancing authorities).[114]

52. The Commission received a number of responses to questions in the Integrating VERs NOI addressing the manner in which public utility transmission providers and balancing authorities could be provided with the data necessary to support centralized VER power production forecasts. Bonneville indicates that the Commission could aid in the creation of more advanced VER power production forecasts through a requirement in the LGIA or SGIA that the VER disclose operational or meteorological data to the public utility transmission provider for reliability and operational reasons. Another option mentioned by Bonneville and other parties is to modify the NERC Reliability Standards to require VERs to provide the data necessary to forecast VER power production.[115]

53. NERC[116] and others[117] provided detailed lists of the types of operational and meteorological data that may be necessary to develop VER power production forecasting tools for both generators and public utility transmission providers. Additionally, the CAISO explains that it requires members of the PIRP to install meteorological equipment at their facilities to obtain wind speed, direction, barometric pressure, and ambient temperature. CAISO also requires real-time energy output and outage and de-rate information, among other data, from participating intermittent resources.[118] CAISO explains that it is currently engaged in a stakeholder process to develop power production forecasting tools for solar resources with a special emphasis on the data necessary to forecast solar ramp events.[119] SEIA, however, notes that solar power production forecasting is still in its infancy, and states that overly prescriptive reporting and forecasting requirements for solar resources would be premature because the forecasting needs for solar facilities are only currently being identified.[120]

54. The Integrating VERs NOI also sought comments on whether public utilities should be required to maintain a meteorological reporting system and/or make meteorological data publically available to aid in the development of state-of-the-art forecasting tools. APS states that public utility transmission providers should not be required to post meteorological data on OASIS because the information typically comes from proprietary sources.[121] Others, like AWEA, claim that it should be possible to share meteorological data publicly without compromising sensitive market data. AWEA warns, however, that protections should be in place to assure commercially sensitive data cannot be inferred from publicly available data.[122] Bonneville notes that inclusion of data reporting requirements in the LGIA and SGIA would be appropriate because those agreements already include confidentiality measures.[123] SEIA contends that the value of meteorological data does not come from its public disclosure, but rather, through the provision of such data to system operators and forecast service providers that incorporate the data into centralized and decentralized power production forecast. SEIA adds that operational data and information regarding generating unit outages should not be made publicly available.[124]

2. Commission Discussion

55. In accord with the general consensus articulated by commenters, the Commission preliminarily finds that power production forecasting can play a significant role in removing barriers to the integration of VERs into the transmission system. The Commission believes that the increased use of power production forecasts in transmission systems where VERs are located can provide transmission providers with improved situational awareness, enable transmission providers to utilize existing system flexibility through the

[108] Integrating VERs NOI, 130 FERC ¶ 61,053 at P 14–17.

[109] Argonne National Lab at 1.

[110] NREL at 9.

[111] NERC at 3.

[112] *Id.* at 20.

[113] AWEA at 23, Iberdrola at 19, NERC at 7.

[114] ISO/RTO Council at 17.

[115] Bonneville at 40, G&T Cooperative at 12, NaturEner at 6.

[116] NERC at 5.

[117] CAISO at 22, Iberdrola at 17, ISO–NE at 13, Xcel at 6–7.

[118] CAISO at 13.

[119] *Id.* at 12.

[120] SEIA at 20.

[121] APS at 6.

[122] AWEA at 35.

[123] Bonneville at 40.

[124] SEIA at 20.

unit commitment and dispatch processes, and, ultimately, lead to a reduction in the amount of reserve products needed to maintain system reliability. At the same time, the Commission recognizes that in areas of the country with very limited production from VERs, the implementation of power production forecasting for VERs could be of less use.[125]

56. Therefore, the Commission does not propose, to require all public utility transmission providers to implement power production forecasting at this time. Instead, the Commission proposes to require VER power production forecasting only by those public utility transmission providers seeking to require a subset of transmission customers to purchase, or otherwise account for, different volumes of generator regulation reserve service under proposed Schedule 10 (addressed below). This proposed reform is intentionally structured in a way that recognizes that VER power production forecasting may not be presently needed in all parts of the country (*e.g.,* those with very limited production from VERs). Because there may be little need for power production forecasting on transmission systems where VERs are not present in significant numbers, the Commission proposes to refrain from imposing a one-size-fits-all requirement to use VER power production forecasting tools on all public utility transmission providers.

57. The Commission is not proposing to require all public utility transmission providers to implement power production forecasting in this Proposed Rule. Nor is the Commission proposing a single appropriate method of cost recovery for the development and implementation of power production forecasts. Instead, the Commission seeks comments on how public utility transmission providers may recover the costs incurred to develop and deploy power production forecasting tools.

58. The Commission's proposal to adopt this requirement is founded on its review of the comments [126] and other technical analysis [127] indicating that the failure to consider VER power production forecasts in the hour-ahead, intra-day, day-ahead, and monthly time frames may result in an over-procurement of reserves, leading in turn to rates that may be unjust, unreasonable, and unduly discriminatory to VERs. Moreover, the Commission believes that the current ISO/RTO use of day-ahead, hour-ahead, and even intra-hour VER power production forecasts in unit commitment and reliability assessment analyses and dispatch procedures [128] demonstrates the benefits to be gained from incorporating these tools into system operations.

59. As indicated above, the Commission believes that power production forecasting on systems where VERs are present can lead to greater situational awareness as well as greater efficiency within the unit commitment, dispatch and reliability assessment processes. In the long-term, seasonal power production forecasts can identify months when the variability of VERs may need to be evaluated in light of planned outages for other generation. In the day-ahead and intra-day time frames, power production forecasts can be incorporated into reliability unit commitments, and in the hour ahead and shorter time frame, power production forecasts can be factored into dispatch instructions. Power production forecasts enable public utility transmission providers and balancing authorities to use their system resources in the most efficient manner. As mentioned by several parties,[129] power production forecasts that predict the timing of potential ramp events are critical to situational awareness for a balancing authority.

60. With respect to data necessary to develop and use a VER power production forecasting model, the Commission notes the NERC Reliability Standards [130] may provide transmission providers with authority to request some operational data from generators. However, to facilitate the development and deployment of power production forecasting, the Commission proposes to revise the *pro forma* LGIA to require interconnection customers whose generating facilities are VERs to provide certain meteorological and operational data to the public utility transmission providers with whom they are interconnected. Such data are necessary to enable a public utility transmission provider to develop and deploy state-of-the-art power production forecasting tools. This proposal builds upon existing Commission data sharing requirements by outlining specific meteorological and operational data necessary to develop power production forecasts. The Commission also preliminarily finds that the *pro forma* LGIA includes adequate confidentiality protections for sensitive data obtained from the VERs.[131]

61. The Commission proposes revisions to the LGIA that will result in different types of meteorological information being provided by interconnection customers based on the type of VER they own and/or operate. In order to enable the most accurate power production forecasts, the proposed revision to the LGIA would require that such data be transmitted from the interconnection customer to the public utility transmission provider at or near real-time. The Commission proposes to revise the *pro forma* LGIA to require interconnection customers with wind-based VERs to provide public utility transmission providers with site specific meteorological data including, but not limited to: Temperature, wind speed, wind direction, and atmospheric pressure. The Commission proposes to revise the *pro forma* LGIA to require interconnection customers with solar-based VERs to provide public utility transmission providers with site specific meteorological data including, but not limited to: Temperature, atmospheric pressure, and cloud cover. The Commission recognizes that different forecasts may require meteorological instruments to be located at hub height, up-wind of resources, or at ground level. However, the Commission will refrain from proposing specific requirements in this respect, and instead proposes to allow the public utility transmission provider and interconnection customer to negotiate these details taking into account the size and configuration of the VER facility, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area. The resource-specific data requirements contained in individual LGIAs must be negotiated on a not unduly discriminatory basis.

62. With respect to operational data, the Commission proposes to revise the *pro forma* LGIA to require

[125] *See* NERC, *Accommodating High Levels of Variable Generation 54 (2009), available at http://www.nerc.com/files/IVGTF_Report_041609.pdf.* ("[I]n many areas where wind power has not reached high penetration levels, uncertainty associated with the wind power has normally been less than that of demand uncertainty * * *. Consequently, power system operators have been able to accommodate current levels of wind plant integration and the associated uncertainty with little or no effort.").

[126] Bonneville at 5, Calpine at 13, M–S–R Public Power Agency at 4, NEPOOL at 7.

[127] *See supra* P 45–46.

[128] ISO/RTO Council at 16.

[129] Iberdrola at 14–18, NERC at 3 & 7, and NREL at 3.

[130] TOP–001, R7.1 (generator outage); TOP–002–2, R14, 15 (changes in output capability and seven day production forecasts); TOP–003–1 R1–3 (outage information); TOP–006–2 (monitoring system conditions); and IRO–004, R4 (generation, operating reserve projections).

[131] *See Pro Forma* LGIA Article 22 (setting forth the confidentiality provisions applicable to data exchanged through the interconnection process).

interconnection customers whose generating facilities are VERs to report to the public utility transmission provider any forced outages that reduce the generating capability of the resource by 1 MW or more for 15 minutes or more. This proposal is similar to a recent CAISO proposal accepted by the Commission on April 30, 2010.[132] As indicated in that case, the requirement to report outages down to a 1 MW threshold will improve power production forecasting accuracy.[133] Provision of VER outage data to this level of granularity will allow a public utility transmission provider to ascertain the extent to which VER current power production is a result of unit availability as opposed to changing weather conditions.[134] If a VER is composed of a number of individual generating units, it is important for the public utility transmission provider to know how many individual generating units are capable of producing energy at any given time. Having such information will eliminate a significant source of forecasting error by ensuring that the public utility transmission provider has accurate information regarding the capacity actually available to produce electricity during the time frame of the operational forecasts. For example, a 50 MW wind generating facility composed of fifty 1 MW turbines will have a maximum output of 50 MW when all of the individual turbines are operating. However, if one of those turbines experiences a forced outage, then the maximum output of the facility is 49 MW. To the extent that a public utility transmission provider is not aware that one turbine is unable to produce energy, the power production forecast for that wind generating facility, during the time the turbine is out of service, will experience an additional uncertainty.[135]

63. The Commission seeks comment on the extent to which the lists of basic meteorological and operational data articulated above may be inadequate or incomplete to achieve the power production forecasting goals discussed herein. Further, the Commission seeks comments on whether public utility transmission providers should be allowed or required to share VER related data received from interconnection customers with other entities, like the source or sink balancing authority area for a transaction, or a government agency, such as NOAA, assuming confidentiality is protected.

64. In order to effectuate the above proposed changes, the Commission proposes to amend the *pro forma* LGIA to add a new definition of Variable Energy Resource to Article 1, add a new section Article 8.4, Provision of Data from a Variable Energy Resource and amend the table of contents. The Commission proposes to define a Variable Energy Resource as a device for the production of electricity that is characterized by an energy source that: (1) Is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. The Commission believes this definition is consistent with NERC's characterization of variable generation.[136] The Commission seeks comment on this proposed definition. Consistent with our approach in Order Nos. 2003 and 661,[137] the Commission proposes not to require retroactive changes to large generator interconnection agreements that are already in effect. However, the Commission seeks comment as to whether this approach would prevent public utility transmission providers from effectively implementing power production forecasting.

65. Because the Commission proposes that this reform would apply only to interconnection customers whose generating facilities are VERs greater than 20 MW, we are proposing revisions only to the *pro forma* LGIA and not the *pro forma* Small Generator Interconnection Agreement (SGIA). By definition, the VER generating facility of an interconnection customer that would interconnect with a public utility transmission provider pursuant to an SGIA is less than or equal to 20 MW in size. The Commission seeks comment on whether this proposed reform should also apply to interconnection customers whose generating facilities are VERs of 20 MW or less and therefore require revisions to the *pro forma* SGIA.

C. Generator Regulation Service-Capacity

66. In Order No. 888, the Commission identified six ancillary services necessary to provide basic transmission service and required public utility transmission providers to offer and/or provide them to transmission customers.[138] Among the ancillary services that the Commission required public utility transmission providers to offer were Regulation and Frequency Response Service (Regulation Service) and Energy Imbalance Service.[139]

67. Regulation Service, offered under Schedule 3 of the *pro forma* OATT, provides the capacity reserve necessary for the continuous balancing of resources (generation and interchange) with load to maintain a scheduled interconnection frequency of 60 cycles per second (60 Hz).[140] In Order No. 888, the Commission required public utility transmission providers to offer Regulation Service for transmission service within or into the public utility transmission provider's balancing authority area[141] to serve load in that area.[142] However, the Commission did not require public utility transmission providers to offer Regulation Service for transmission service out of or through the transmission provider's balancing authority area to serve load in another balancing authority area.[143]

68. Energy Imbalance Service, offered under Schedule 4 of the *pro forma* OATT, accounts for hourly energy deviations between a transmission customer's scheduled delivery of energy and the actual energy used to serve load.[144] In Order No. 888, the Commission required public utility transmission providers to offer Energy Imbalance Service for transmission service within and into the transmission provider's balancing authority area to serve load in that area.[145] Like Regulation Service, the Commission did not require public utility transmission providers to offer Energy Imbalance Service for transmission service being used to serve load in another balancing authority area.

69. As described above, Regulation Service and Energy Imbalance Service, while different in function, are complementary services through which public utility transmission providers

[132] *Cal. Indep. Sys. Operator Corp.,* 131 FERC ¶ 61,087 (2010).

[133] *Id.* P 42.

[134] *Id.* P 45.

[135] *Id.* P 19 (noting that while poor outage data make immediate forecasts less accurate, they also affect future forecasts because the past data serves as an input in the forecast algorithm for future time periods).

[136] *See* NERC, *Accommodating High Levels of Variable Generation* 13–14 (2009), *available at http://www.nerc.com/files/IVGTF_Report_041609.pdf.*

[137] Order No. 661, FERC Stats. & Regs. ¶ 31,186 at P 120; Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 910.

[138] Order No. 888, FERC Stats. & Regs. at 31,703–04.

[139] *Id.*

[140] *Id.* at 31,707–708 (referencing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,514, at 33,086 (1995)).

[141] The term control area, used in the *pro forma* OATT, has been superseded in the NERC Reliability Standards and industry usage by the term balancing authority area.

[142] *Id.* at 31,717.

[143] *Id.*

[144] *Id.* at 31,708.

[145] *Id.* at 31,717.

maintain their systems' balance and recover both the capacity (Regulation) and energy (Energy Imbalance) costs of doing so from transmission customers serving load on their systems. At the time of Order No. 888, the Commission believed that it was reasonable to only provide standardized ancillary service schedules for transmission used to service load because load (rather than generation) exhibited the greatest amount of variability.[146] The Commission noted that generators should be able to deliver scheduled hourly energy with precision and that the requirements for generators to meet their schedules should be contained in interconnection agreements.

70. In Order No. 890, the Commission noted that the existing energy imbalance charges were the subject of significant concern and confusion in the industry.[147] The Commission expressed concern about the variety of different methodologies used for determining imbalance charges and whether the level of the charges provided the proper incentive to keep schedules accurate without being excessive.[148] Such concerns led the Commission to revise existing *pro forma* Energy Imbalance Service provisions and require public utility transmission providers to offer a new service, Generator Imbalance Service, to account for hourly energy deviations between a transmission customer's scheduled delivery of energy from a generator and the amount of energy actually generated.[149] The Commission found that formalizing generator imbalance provisions in the *pro forma* OATT would standardize the future treatment of such imbalances, thereby lessening the potential for undue discrimination, increasing transparency, and reducing confusion in the industry that resulted from the then current plethora of different approaches.[150]

71. While the *pro forma* Generator Imbalance Service provides a mechanism for public utility transmission providers to recover the cost of providing the *energy* needed to manage hourly generator imbalances, it does not provide a mechanism for public utility transmission providers to recover the costs of holding reserve *capacity* associated with providing generator imbalance energy.[151] Although the Commission in Order No. 890 did not create a new rate schedule to expressly account for these capacity costs, it acknowledged the likelihood that such costs would be incurred in connection with the provision of generator imbalance service.[152] Accordingly, the Commission provided a mechanism by which public utility transmission providers could recover these costs, explaining that "[t]o the extent a transmission provider wishes to recover costs of additional regulation reserves associated with providing imbalance service,[153] it must do so via a separate FPA section 205 filing demonstrating that these costs were incurred correcting or accommodating a particular entity's imbalances." [154] In Order No. 890–A the Commission clarified that public utility transmission providers may propose to assess regulation charges to generators selling in the balancing authority area, as well as generators selling outside the balancing authority area, and that the Commission will consider such proposals on a case-by-case basis.[155] Since the issuance of Order No. 890, on a case-by-case basis, the Commission has accepted proposals to recover such generator regulation charges pursuant to this mechanism.[156]

72. More recently, the Commission has addressed a number of filings for the provision of generator regulation service to wind energy resources. Public utility transmission providers have proposed different methods of allocating the costs of or assigning the responsibility for generator regulation service needed to manage the variability of VERs.[157] These proposals have originated from public utility transmission providers that have a substantial amount of existing and projected wind resource generation on their systems, and the proposals have taken different approaches to managing and charging for the variability of wind resources. In *NorthWestern,* the transmission provider proposed to require wind energy resources using transmission service to export energy to another balancing authority area to provide for their own generator regulation service (either through becoming their own balancing authority areas, dynamically scheduling their energy out of NorthWestern's balancing authority area, or by self-supplying the required generator regulation reserves).[158] The Commission denied NorthWestern's proposal, finding that a requirement for intermittent renewable generators to supply or otherwise account for their own generator regulation (*i.e.,* capacity) service would undermine NorthWestern's obligation to offer generator imbalance (*i.e.,* energy) service under Schedule 9 of its OATT.[159]

73. Unlike *NorthWestern,* in *Westar,* the transmission provider proposed to offer and charge for generator regulation service to all generation resources that use transmission service to export energy from Westar's balancing authority area.[160] However, rather than proposing a standardized generator regulation service charge, Westar proposed to apportion the total charge between dispatchable generation resources and intermittent generation resources, commensurate with the respective generator regulation service burden each of these resources placed on Westar's system.[161] The Commission accepted Westar's proposal as an interim measure to be in effect only until the implementation of an ancillary services market, and the balancing authority area consolidation in Southwest Power Pool, Inc. (SPP).[162]

74. Most recently, in *Puget Sound,* the Commission evaluated a proposed "following service" for wind resources, which Puget described as a capacity service designed to follow and balance the within-hour variations in output from wind generators in Puget's balancing authority area.[163] Because Puget Sound's proposed rate was based on the capacity cost of a proxy unit that it may never construct, the Commission found that Puget Sound had not shown its rate to be a reasonably accurate

[146] In 1996, when Order No. 888 was developed and issued, wind generation was not a significant energy source, with a total capacity of approximately 1,698 MW. *Imbalance Provisions for Intermittent Resources Assessing the State of Wind Energy in Wholesale Electricity Markets,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,581, at P 7 (2005). As mentioned above, wind capacity has developed at a significant pace, now totaling more than 35,000 MW of capacity. *See supra* note 17.

[147] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 634.

[148] *Id.*

[149] *Id.* P 663.

[150] *Id.* P 667.

[151] *See id.* P 689 ("The Commission concludes that excluding additional regulation costs as a general matter is appropriate because much of those costs would be demand costs.").

[152] *Id.* P 690.

[153] Refers to costs associated with capacity used to provide generator imbalance reserve service that otherwise are not recovered through Schedule 3.

[154] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n. 401.

[155] Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 313.

[156] *See, e.g., Entergy Services Inc.,* 120 FERC ¶ 61,042, at P 62–66 (2007); *Sierra Pac. Res. Operating Cos.,* 125 FERC ¶ 61,026 (2008).

[157] *See, e.g., NorthWestern,* 129 FERC ¶ 61,116, *order on reh'g,* 131 FERC ¶ 61,202; *Westar,* 130 FERC ¶ 61,215; *Puget Sound,* 132 FERC ¶ 61,128; Bonneville Power Admin., June 29, 2009 Filing, Docket No. EF09–2011–000.

[158] *NorthWestern,* 129 FERC ¶ 61,116, *order on reh'g,* 131 FERC ¶ 61,202.

[159] *NorthWestern,* 129 FERC ¶ 61,116 at P 24.

[160] *Westar,* 130 FERC ¶ 61,215 at P 1.

[161] *Id.* P 35–36.

[162] *Id.* P 35.

[163] *Puget Sound,* 132 FERC ¶ 61,128 at P 4.

representation of the costs incurred in providing a following service to wind resources.[164]

75. In the Integrating VERs NOI, the Commission sought to explore whether the variability associated with the increased number of VERs may result in an over-reliance on procuring additional reserves.[165] The Commission sought comment on the appropriate use of reserve products to ensure that reserves are being deployed efficiently such that the resulting rates are just, reasonable, and not unduly discriminatory.[166] Particularly relevant to the proposed reform discussed below, the Commission also sought comment on whether the "*pro forma* OATT [should] be revised or new provisions added to expressly address the added reserve capacity necessitated by increased number of VERs."[167]

1. Comments

76. The Commission received a number of comments on this issue, and different sectors of the industry hold widely divergent views on whether and in what manner public utility transmission providers should be allowed to charge VERs to account for the variability exhibited by those resources. The VER industry strongly opposes what it characterizes as "integration charges," such as the above-described proposals from Westar and Puget Sound. AWEA views any proposal to assess a VER integration charge (*i.e.,* any type of ancillary service) that is not justified by the variability of the actual resources as discriminatory on its face.[168] AWEA further contends that any added costs that result from VER integration are the result of the fact that current power system operating procedures were not designed to accommodate VERs.[169] Accordingly, AWEA argues that before any integration charge is assessed to VERs, public utility transmission providers should first be required to implement operational reforms to update their systems, including the following: fast intra-hour markets and intra-hourly scheduling; a robust ancillary services market; the option for third-party or self supply of ancillary services; dynamic transfer capability out of the balancing authority area; and Area Control Error (ACE) diversity interchange or an Energy Imbalance Service market.[170] NextEra agrees, adding that procurement of ancillary services is based on numerous factors within a balancing authority area and that the costs of these services should not be allocated to individual facilities on an incremental basis.[171]

77. NERC also contends that enhancements to existing operating criteria, practices, and procedures to account for large increases in the number of VERs should be developed through the stakeholder processes of reliability bodies, such as NERC, Regional Entities and RTOs, noting that it is critical that practices such as reserve procurement for VERs are reviewed to assist system operators in managing increased uncertainty from VERs.[172]

78. Public utility transmission providers, however, generally hold a different view, seeking the flexibility to develop rate schedules that address the particular circumstances and resource mix present within their balancing authority areas. For example, Xcel recommends that the Commission encourage specific VER integration rates for public utility transmission providers outside of the regional markets. Xcel suggests that these integration rates could be based on increased regulation, load-following and cycling operations and maintenance impacts on the remainder of the balancing fleet providing the integration service, with VERs paying the costs of this service in place of conventional load-based billing.[173] Westar states that "[t]he ancillary services provisions of the *pro forma* OATT should be revised or new provisions added to expressly address the added reserve capacity necessitated by increased number of VERs."[174]

79. Bonneville asserts that existing reserve products are not the most cost-effective means of supplying reserves of VERs and that balancing authorities should be permitted to establish new reserve services to address the uncertainty associated with VERs.[175] Bonneville cautions that if reliability or cost recovery issues arise in regions where VERs are concentrated, it will become increasingly difficult to build new projects in those regions.[176] Bonneville also notes that the current generator imbalance service under Schedule 9 is for energy only and does not account for the capacity required to accommodate the full range of deviations within any scheduling period, hourly or intra-hourly. To better account for this capacity, Bonneville states that it is necessary to charge for the regulation, following, and generator imbalance capacity components that are required to manage the variability of VERs.[177]

80. Bonneville also emphasizes the challenges faced by balancing authority areas in which a large number of VERs are located, and where much of the energy generated by these resources is exported to serve load in other balancing authority areas. Bonneville stresses that current policies are leading to duplicative and inefficient carrying of reserves by source and sink balancing authorities, as well as creating cost and reliability risks for balancing authority areas from which VERs are exported.[178] Accordingly, Bonneville believes that rather than serving as default suppliers, source balancing authorities should strive to facilitate options (*e.g.,* self-supply and dynamic transfers) for VER exporters to acquire balancing services from alternative sources.[179] Bonneville argues that clear delineation between being a default supplier versus a fully compensated party to a defined transaction is essential to the sustainable growth of VERs.[180]

81. Some commenters urge the Commission to eliminate any obligation on the part of a public utility transmission provider to ensure that sufficient capacity is available to manage the moment-to-moment variability of VERs located within their balancing authority area, and instead place that obligation on the VER and/or the entity using the VER to serve load.[181] NorthWestern contends that "because not all transmission providers will have the resources available to provide the service, there should be no obligation on the transmission provider

[164] *Id.* P 35.

[165] Integrating VERs NOI, 130 FERC ¶ 62,053 at P 35.

[166] *Id.*

[167] *Id.* P 36.

[168] AWEA at 15–16.

[169] *Id.* at 67.

[170] *Id. See also* Iberdrola at 37.

[171] NextEra at 25 (explaining that while contingency reserve requirements are set by the single largest contingency within a balancing authority area, the entity that owns that contingency is not charged an incremental rate for those reserves).

[172] NERC at 22–23.

[173] Xcel at 38.

[174] *See* Westar at 27–28. Westar contends that its OATT Schedule 3A approved by the Commission in *Westar,* 130 FERC ¶ 61,125 provides a model that can be followed.

[175] Bonneville at 84.

[176] *Id.* at 2.

[177] *Id.* at 94.

[178] *Id.* at 3.

[179] *Id.* at 22.

[180] *Id.* at 4.

[181] Bonneville at 22 (arguing that the VER owner and the entity that is using the VER for its own load service should have the fundamental planning, operational, and financial responsibility for ensuring that there is sufficient capacity available to manage the full range of variability of the VER—including regulation, load following, generator imbalance, and extreme tail events (large up and down ramp events)).

to do so."[182] Instead, NorthWestern argues that a new ancillary services schedule could define the amount of service necessary to maintain system reliability and the options the transmission customer has to acquire and/or self-supply the service.[183] Some commenters urge the Commission to require VERs to submit "balancing plans" to host balancing authorities during the interconnection process, including such things as third-party balancing arrangements, comparisons of a VER's balancing needs with products offered by the host balancing authority, and requests to the host balancing authority to develop new balancing products and/or dynamically scheduling tools.[184]

82. Several entities suggest that it is premature for the Commission to require new or different reserve products. For example, EEI argues that the Commission should first allow industry-based studies addressing the reliability-related reserve issues to proceed. EEI believes that after the reliability issues are addressed, the Commission should examine the ancillary services mandated in the *pro forma* OATT to determine whether they provide the proper market-based incentives for supply and demand resources to mitigate the costs of variability associated with VERs.[185] EEI stresses, however, that the Commission should not mandate a particular outcome, such as a required reserve product, and instead should allow regional solutions to be developed.[186]

83. Other entities, such as NREL and NaturEner, indicate that different reserve products should be used to respond to different types of events. NREL indicates that where VER ramp events frequently exceed the ramp capabilities of existing resources, a ramp service may be justified; however, where such VER ramp events happen infrequently (what NREL refers to as "tail" events) a service more like supplemental or non-spinning reserves may be desirable.[187] NaturEner argues that it is not financially feasible to use regulation reserves for rare VER ramp events, and that public utility transmission providers should be able to use contingency reserves [188] for such events.[189] Lastly, the Commission notes that commenters express various opinions, as well as confusion, regarding a public utility transmission provider's ability to use contingency reserves to manage extreme VER ramp events.[190]

2. Commission Discussion

84. As the Commission explained in *NorthWestern,* public utility transmission providers are not permitted to disclaim the obligation to offer to provide transmission customers with the capacity reserves associated with the provision of generator imbalance service.[191] The Commission also stated in *NorthWestern* that eliminating this obligation or placing conditions on the ability of transmission customers using VERs to receive this capacity service would undermine the public utility transmission provider's ability to offer generator imbalance service.[192] In this way, the Commission in *NorthWestern* recognized public utility transmission providers' obligation to provide this generator regulation service to customers using transmission service to deliver energy from generators located within their balancing authority area.

85. In the Proposed Rule, the Commission seeks to bring consistency to the manner in which public utility transmission providers carry out this obligation by incorporating Schedule 10—Generator Regulation and Frequency Response Service into the *pro forma* OATT. In doing so, the Commission seeks to bring clarity and transparency to the rates, terms and conditions that apply to the provision of this service, as well as the mechanism through which public utility transmission providers can recover the associated costs. At the same time, we recognize that on many transmission systems, especially those that do not have a significant number of transmission customers that export energy, public utility transmission providers already recover the costs of providing regulation service to transmission customers serving load on their systems through Schedule 3 of the *pro forma* OATT. The proposed reform would require public utility transmission providers to file Schedule 10, setting forth the transmission provider's obligation to offer generator regulation service and the rate at which the service would be provided. However, the proposed reform refrains from requiring a volumetric reserve requirement until the public utility transmission provider chooses to make a subsequent filing proposing an appropriate volumetric reserve requirement.

86. We recognize that the Commission adopted, in Order No. 890, a case-by-case approach to filings by public utility transmission providers seeking to recover the costs of additional regulation reserves associated with providing generator imbalance service.[193] However, in light of the increasing number and diversity of proposals filed with the Commission, it is appropriate to revisit the case-by-case approach and bring a measure of consistency to the manner in which generation regulator reserve service is provided.

87. Therefore, the Commission proposes to add a new rate schedule to the *pro forma* OATT that complements the generator imbalance service provided under Schedule 9 of the *pro forma* OATT. In order to meet their obligations to offer generator imbalance service under Schedule 9, public utility transmission providers must hold unloaded resources in reserve to respond to moment-to-moment variations attributable to generation. The proposed reform recognizes this *de facto* obligation and establishes a generic rate schedule (Schedule 10—Generator Regulation and Frequency Response Service) through which public utility transmission providers may recover the costs of providing this service. The Commission preliminarily finds that clarifying the manner by which public utility transmission providers may recover the costs associated with fulfilling their obligation to offer this service will remove barriers to the integration of VERs by eliminating public utility transmission providers' uncertainty regarding cost recovery.

88. Proposed Schedule 10 is modeled on Schedule 3—Regulation and Frequency Response Service of the *pro forma* OATT. Where Schedule 3 allows public utility transmission providers to recover the costs of regulation reserves associated with variability of load within its balancing authority area, proposed Schedule 10 will provide a mechanism through which public utility transmission providers can recover the costs of providing regulation reserves associated with the variability of generation resources both when they are

[182] *See* NorthWestern at 30.

[183] *Id.*

[184] PUD No. 2 Grant County at 4, Bonneville at 25–26.

[185] EEI at 20–21.

[186] *Id.* at 21–22.

[187] NREL at 15.

[188] Contingency reserves are reserves held and deployed in the event of an unexpected failure or outage of a generation, non-generation or transmission resource.

[189] NaturEner at 21.

[190] Westar at 27, Puget at 13, Exelon 15–16, Xcel at 36–37, Grant PUD at 25–26.

[191] *NorthWestern,* 129 FERC ¶ 61,116 at P 27.

[192] *See id.* P 24.

[193] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 689 n.401, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 313.

serving load within the transmission provider's balancing authority area and when they are exporting to load in other balancing authority areas.

89. Under proposed Schedule 10, a public utility transmission provider must offer generator regulation service, to the extent it is physically feasible to do so from its resources or from resources available to it, to transmission customers using transmission service to deliver energy from a generator located within the transmission provider's balancing authority area. A transmission customer subject to Schedule 10 must either take service pursuant to this proposed rate schedule or demonstrate that it has satisfied its regulation service obligation through dynamically scheduling its generation to another balancing authority area [194] or by self-supplying regulation reserve capacity from generation or non-generation resources.[195] Furthermore, consistent with Order No. 890, public utility transmission providers may not charge transmission customers for regulation reserves under both Schedule 3 and proposed Schedule 10 for the same transaction.[196]

90. As with generator imbalance service, it may be appropriate for a public utility transmission provider to allow a generator located within its balancing authority area, which is not otherwise a transmission customer, to execute a service agreement for generator regulation service.[197] In the instance where multiple transmission customers are delivering energy from a single generator, the public utility transmission provider would need to apportion among those multiple transmission customers the generator regulation service charge for such generator. The apportionment process could be difficult and administratively burdensome for the public utility transmission provider. Accordingly, by establishing a contractual arrangement between the public utility transmission provider and such generator through the execution of a service agreement, the public utility transmission provider can charge the generator directly for generator regulation service, and any transmission customer delivering energy from such generator will be deemed to have satisfied its obligation to purchase generator regulation service under section 3 and Schedule 10.

91. The Commission proposes that this service should apply to transmission customers delivering energy from all generators (as opposed to VERs only) located within a public utility transmission provider's balancing authority area. The Commission reiterates that in establishing proposed Schedule 10, we are not changing the nature of the services that a public utility transmission provider must offer its transmission customers. Nothing in this proposed rule would affect the manner in which balancing authorities are required to maintain balanced systems that are operated in a safe and reliable fashion, consistent with NERC Reliability Standards. The proposal here is simply to establish a generic cost recovery mechanism for a service that public utility transmission providers already are obligated to offer customers taking transmission service within their balancing authority area.

92. As with Schedule 3, the proposed Schedule 10 charge will be the product of two components: A per-unit rate for regulation reserve capacity and a volumetric component for regulation reserve capacity. The regulation reserve capacity requirement is the cost and volume of unloaded generation or other non-generation resources held in reserve to manage the variability of load (under Schedule 3) and generation (under proposed Schedule 10) in a reliable manner.

93. Schedule 3 and the proposed Schedule 10 both are designed to recover the costs of holding regulation reserve capacity to meet system variability. Because the service provided under both schedules is functionally equivalent, the Commission proposes to find that it is just and reasonable to use the same rate currently established in a public utility transmission provider's Schedule 3 when charging transmission customers under proposed Schedule 10. For a public utility transmission provider to apply a different rate under the proposed Schedule 10, the public utility transmission provider would have to demonstrate that the per-unit cost of regulation reserve capacity is somehow different when such capacity is utilized to address system variability associated with generator resources. Moreover, the Commission notes that the use of a common rate is consistent with Commission policy utilizing the same rate structure for energy and generator imbalance service, as well as the proposed generator regulation rate that the Commission accepted in *Westar*.

94. Whereas the Commission finds that the per-unit rate for service under proposed Schedule 10 should be the same as the rate for service under existing Schedule 3, the Commission recognizes that generators and load may exhibit different amounts of overall variability. Moreover, the Commission recognizes that variability may be different among different types of resources. A number of commenters indicate that VERs may impose a disproportionate impact on overall system variability, thereby requiring public utility transmission providers to hold a greater per MW amount of regulation reserves for VERs than for load and/or other generation resources.[198] As a general matter, the Commission agrees that regulation reserve costs should be allocated to transmission customers consistent with cost causation principles. Further, the Commission does not propose to mandate a particular method for apportioning the volume of regulation reserves of proposed Schedule 10. Instead, we preliminarily find that each public utility transmission provider should propose a method of apportioning such volumes of regulation reserves, based on the facts and circumstances of its individual system. For example, the Commission recognizes that a public utility transmission provider with few VERs located in its balancing authority area may choose to apply only one volumetric regulation requirement for all generating resources. This may be the case to the extent that the impact of VERs on its system is minimal and the public utility transmission provider, in its judgment, deems the administrative burden of justifying two separate volumetric regulation requirements is uneconomic.

95. Alternatively, where a subset of transmission customers causes a public utility transmission provider to procure a different per unit volume of regulation

[194] See Joint Initiative at 7 (describing the development of the Dynamic Scheduling System in order to simplify, enhance and reduce the cost of dynamically scheduling resources between Balancing Authority Areas across the western interconnection).

[195] *See* Order No. 888, FERC Stats. & Regs. at 31,717 (establishing the same options to dynamically schedule or self-supply for customers subject to Schedule 3 of the *pro forma* OATT). The self-supply option would allow VERs to acquire regulating reserves to meet their schedules or to self-curtail according to specified criteria in order to reduce the amount of reserves they are obligated to supply or purchase. *See also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 888 (modifying Schedules 2, 3, 4, 5, 6, and 9 of the pro forma OATT to indicate that the services provided under those rate schedules may be provided by generating units as well as other non-generation resources such as demand response).

[196] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 690 (requiring transmission providers to demonstrate that any proposals to recover capacity costs associated with Generator Imbalance Service do not lead to double recovery). *See also Entergy,* 120 FERC ¶ 61,042 at P 62–66*; Sierra Pac. Res. Operating Cos.,* 125 FERC ¶ 61,026; *Westar,* 130 FERC ¶ 61,215 at P 4.

[197] *See* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 288.

[198] Westar at 7, NorthWestern 5–6.

reserves than for other transmission customers, public utility transmission providers may require that subset of transmission customers to purchase, or otherwise account for, a different volume of generator regulation reserves, commensurate with its relative impacts on the system. The Commission accepted such a proposal (on an interim basis) in *Westar,* where a public utility transmission provider demonstrated the disproportionate impact of VERs on overall system variability, and the Commission found that it was consistent with cost causation principles for the public utility transmission provider to allocate a different regulation reserve capacity requirement to those resources.[199] Accordingly, under proposed Schedule 10, a public utility transmission provider may require a transmission customer delivering energy from VERs to purchase, or otherwise account for, a different volume of generator regulation reserve to the extent that the different regulation reserve volumes are supported by data showing that, on the public utility transmission provider's system, VERs impose a different per unit impact on overall system variability than conventional generating units.

96. At the same time, the Commission acknowledges commenters who argue that public utility transmission providers should be required to adopt operational reforms to mitigate the volume of regulation reserves that may be required to manage the variability of VERs. As discussed above, AWEA contends that before imposing any specific generator regulation reserve costs to VERs, public utility transmission providers should first implement the following: fast intra-hour markets and intra-hourly scheduling; a robust ancillary services market; the option for third-party or self supply of ancillary services; dynamic transfer capability out of the balancing authority area; and Area Control Error (ACE) diversity interchange or an Energy Imbalance Service market.[200] We agree that public utility transmission providers should implement certain operational reforms before requiring transmission customers delivering energy from VERs to purchase, or otherwise account for, different volumes of generator regulation service than those transmission customers delivering energy from other generators.

97. Accordingly, a public utility transmission provider may not require different volumes of generator regulation service from transmission customers delivering energy from VERs as opposed to conventional generators without implementing intra-hourly scheduling and power production forecasting as discussed in this Proposed Rule. Subsequently, a public utility transmission provider may require the subset of transmission customers who deliver energy from VERs to purchase, or otherwise account for, different volumes of generator regulation service, provided that it demonstrates that the different regulation reserve volume is necessitated by that subset of transmission customers.

98. However, the Commission will not require public utility transmission providers to implement the other reforms suggested by AWEA at this time. While the Commission believes that it is appropriate to require public utility transmission providers to implement those reforms that are within their individual control (as is the case with intra-hourly scheduling and power production forecasting) some of AWEA's proposals would require measures that go beyond an individual public utility transmission providers' reasonable control (such as the development of ancillary services markets or a regional ACE diversity interchange) and are coordinated reforms that require the cooperation of other transmission providers. As discussed above, industry stakeholder groups are currently addressing a number of these issues, and our intention here is to propose those reforms that can be adopted in the near-term by individual public utility transmission providers.

99. In addition to the generator regulation reform proposed herein, commenters in response to the Integrating VERs NOI address a number of issues related to ancillary services reforms that do not appear ripe for Commission action in this proceeding. For example, commenters suggest the possibility of reforming rules associated with the provision of contingency reserves to allow the use of these reserves to cover infrequent but significant VER ramp events, described as "tail" events.[201] Still other commenters suggest that the Commission revisit the rules applicable to VERs regarding their obligations to provide reactive power capabilities.[202] The Commission proposes to make no additional reforms to the ancillary services sections of the OATT beyond those proposed at this time. We believe these suggested reforms require further study and will benefit from continued stakeholder discussions, such as through NERC's Integration of Variable Generation Task Force. Accordingly, the Commission will continue to monitor these and other potential ancillary services reforms, but will not address them in this proceeding.

100. Finally, the Commission seeks comments from NERC and industry stakeholders on the steps needed to resolve the confusion regarding the use of contingency reserves to manage extreme ramp events of VERs.[203] The Commission seeks comments from NERC and industry stakeholders on the extent to which some additional type of contingency reserve service (beyond the services provided under Schedule 5 and 6 of the *pro forma* OATT) would ensure that VERs are integrated into the interstate transmission system in a non-discriminatory manner while re-mailning consistent with NERC Reliability Standards.

VI. Compliance Filings

101. The Commission proposes that each public utility transmission provider must comply with the requirements of this Proposed Rule. The Commission proposes to require each public utility transmission provider to submit a compliance filing within six months of the effective date of the final rule in this proceeding revising its OATT, LGIA, or other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the proposed requirements set forth in this Proposed Rule.[204] Accordingly, in the compliance filing required by the Proposed Rule, a public utility transmission provider must file (1) revisions to its OATT to implement 15-minute scheduling, (2) revisions to its LGIA to include a requirement for interconnection customers whose generating facility is a VER to provide data to the public utility transmission provider when the public utility transmission provider is developing and deploying power production forecasting for VERs, and (3) the addition of

[199] *Westar,* 130 FERC ¶ 61,215 at P 35–36. In *Westar,* the proposal was an interim measure that would be in place only until the implementation of Southwest Power Pool's balancing area consolidation and ancillary services market. *Id.*

[200] AWEA at 67. *See also* Iberdrola at 37.

[201] *See, e.g.,* NREL at 16–17.

[202] *See, e.g.,* Bonneville at 100, Xcel at 41, Nevada Power at 7–8.

[203] Schedule 5 (Operating Reserve—Spinning Reserve Service) and Schedule 6 (Operating Reserve—Supplemental Reserve Service) respond to contingency events. Spinning Reserve Service is used to serve load "immediately in the event of a system contingency" whereas Supplemental Reserve Service "is not available immediately to serve load but rather within a short period of time."

[204] *See* Appendix B and C for the proposed *pro forma* OATT and LGIA provisions consistent with this Proposed Rule.

Schedule 10 to the OATT, which includes the same per unit rate from their currently effective Schedule 3, and a blank or unfilled volumetric component.

102. In some cases, public utility transmission providers may have provisions in their existing OATTs and LGIAs that the Commission has deemed to be consistent with or superior to the *pro forma* OATT and LGIA. Where these provisions are being modified by the final rule, public utility transmission providers must either comply with the final rule or demonstrate that these previously-approved variations continue to be consistent with or superior to the *pro forma* OATT and LGIA as modified by the final rule.

103. The Commission will assess whether each compliance filing satisfies the proposed requirements and principles stated above and issue additional orders as necessary to ensure that each public utility transmission provider meets the requirements of this Proposed Rule.

104. The Commission proposes that transmission providers that are not public utilities will have to adopt the requirements of this Proposed Rule as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888.[205]

105. Subsequent to the acceptance of its compliance filing, a public utility transmission provider will have the opportunity to justify, in a section 205 filing, a proposal (1) to require all transmission customers who are delivering energy from generators to purchase, or otherwise account for, the same volume of generator regulation reserves or (2) to require transmission customers who are delivering energy from VERs to purchase, or otherwise account for, a different volume of generator regulation reserves than it proposes to charge transmission customers delivering energy from other generating resources.[206] Where a public utility transmission provider proposes the same volume of generator regulation reserves for all generators, it must demonstrate that the volume of regulation reserves required of transmission customers delivering energy from generators located within its balancing authority area is commensurate with their proportionate effect on net system variability and taking account of diversity benefits.[207] Such a filing must show that the public utility transmission provider has fully implemented (or been granted waiver from) the intra-hourly scheduling requirement set forth in the Proposed Rule.

106. Where a public utility transmission provider proposes to require transmission customers who are delivering energy from VERs to purchase, or otherwise account for, a different volume of generator regulation reserves than it proposes to charge transmission customers delivering energy from other generating resources, it must demonstrate that the volumes of regulation reserves required of those subsets of transmission customers delivering energy from generators located within its balancing authority area are commensurate with their proportionate effect on net system variability and taking account of diversity benefits. Such a filing must show that the public utility transmission provider has fully implemented (or been granted waiver from) the intra-hourly scheduling requirement set forth in the Proposed Rule and must also show the public utility transmission provider has developed and deployed power production forecasting for VERs. The Commission seeks comment on the manner by which a public utility transmission provider should be required to show they have developed and deployed power production forecasts.

107. The Commission proposes that any such subsequent filing including different volumetric requirements for different subsets of transmission customers should be supported with actual data collected over a one year period subsequent to the implementation of intra-hourly scheduling and power production forecasting for VERs. The Commission acknowledges that this proposal may delay a public utility's ability to recover the cost associated with providing generator regulation service. We further acknowledge that there may be alternative methods for developing the data necessary to support different volumetric requirements for different subsets of transmission customers. The Commission seeks comment as to such methods of demonstration, how they could support a Commission finding that the Schedule 10 filing is just and reasonable, and ways in which these methods of demonstration may be preferable to this aspect of the Commission's proposal.

VII. Information Collection Statement

108. The following collections of information contained in this Proposed Rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[208] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[209] The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

109. Additionally, the Commission encourages comments regarding the time burden expected to be required to comply with the proposed rule regarding intra-hourly transmission scheduling requirements and the requirement to coordinate and provide meteorological and operational data where relevant. Specifically, the Commission seeks comment on: (1) The additional burden and cost (human, hardware and software) associated with implementation, operation and maintenance of intra-hour transmission scheduling in 15-minute increments; and (2) the additional time burden and cost (human, hardware and software) involved in implementation, operation and maintenance for an interconnection customer to coordinate and provide meteorological and operational data to the public utility transmission provider where relevant.

Burden Estimate: The additional estimated public reporting burdens for the proposed reporting requirements in this rule are as follows:

[205] Order No. 888, FERC Stats. & Regs. at 31,760–763.

[206] The Commission expects that in any subsequent filing to establish a volumetric requirement in Schedule 10, public utility transmission providers will address how Schedule 10 and Schedule 3 will work together to allow for the recovery of total regulation reserve costs.

[207] Diversity benefits result from the aggregation of the variations of all resources such that one resource's negative deviation can offset some or all of another resource's positive deviation. When the transactions of two customers result in diversity benefits, it is incorrect to say that one customer is benefitting the other but not vice versa. Instead, the diversity benefits result from both transactions and the Commission finds that sharing of these benefits among the customers is reasonable. *Westar,* 130 FERC ¶ 61,215 at P 37–38.

[208] 44 U.S.C. 3507(d) (2006).

[209] 5 CFR 1320.11 (2010).

Data collection FERC 516	Number of respondents [1]	Number of responses [2]	Hours per response [3]	Total annual hours [1 × 2 × 3]
Conforming tariff changes to require intra-hourly scheduling or deviation request (18 CFR 35.28(c)(1)(vi)).	134	1	3	402.
Implementation of intra-hourly scheduling (15-minute intervals)	134	1	6 initial set up, 2 maintenance and operation.	804 initial year, 268 subsequent years.
Addition of ancillary service rate schedule, Schedule 10 or deviation request (18 CFR 35.28(c)(1)(vi)).	134	1	5	670.
Conforming changes to LGIA (for meteorological and operational data provided by Interconnection Customers with VERs) or deviation request (18 CFR 35.28(f)(1)(v)).	134	1	7	938.
Provision of meteorological and operational data by Interconnection Customers with VERs to public utility transmission providers.	270*	1	4 initial set up, 2 maintenance and operation.	1,080 initial year, 540 subsequent years.
Totals				3,894 initial year, 2,818 subsequent years.

* The Commission estimates that there are approximately 270 VERs under construction, permitted, with an application pending, or proposed to come online 2010–2011 potentially subject to this requirement.

Cost To Comply: The Commission has projected the cost of compliance to be $443,916 in the initial year and $321,252 in subsequent years.

Total Annual Hours for Collection in initial year (3,894 hours) @ $114 an hour [average cost of attorney ($200 per hour), consultant ($150), technical ($80), and administrative support ($25)] = $443,916

Total Annual Hours for Collection in subsequent years (2,818 hours) @ $114 an hour = $321,252.

Title: FERC–516, Electric Rate Schedules and Tariff Filings

Action: Proposed Collection.

OMB Control No. 1902–0096.

Respondents for This Rulemaking: Businesses or other for profit and/or not-for-profit institutions.

Frequency of Information: As indicated in the table.

Necessity of Information: The Federal Energy Regulatory Commission is proposing changes to the *pro forma* OATT in order to remedy operational challenges related to the increased integration of VERs to the bulk electric system. The purpose of this Proposed Rule is to strengthen the *pro forma* OATT, so VERs can be reliably and efficiently integrated into the electric grid and to ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential. This Proposed Rule seeks to achieve this goal by amending the *pro forma* OATT and LGIA to incorporate provisions that require intra-hourly transmission scheduling, require interconnection customers whose generating facilities are VERs to provide meteorological and operational data to public utility transmission providers for the purpose of power production forecasting and create a generic ancillary service schedule.

Internal Review: The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

110. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], *e-mail: DataClearance@ferc.gov, Phone:* (202) 502–8663, *fax:* (202) 273–0873.

111. Comments on the collections of information and the associated burden estimates in the proposed rule should be sent to the Commission in this docket and may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission], at the following e-mail address: *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0096 and the docket number of this proposed rulemaking in your submission.

VIII. Environmental Analysis

112. 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.[210] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Proposed Rule under § 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.[211]

IX. Regulatory Flexibility Act Analysis

113. The Regulatory Flexibility Act of 1980 (RFA)[212] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. This Proposed Rule applies to public utilities that own, control or operate interstate transmission facilities other than those that have received waiver of the obligation to comply with Order Nos. 888, 889, and 890. The total estimated number of public utility transmission providers that, absent waiver, would have to modify their current OATTs by filing the revised *pro forma* OATT is 134. Of these public utility transmission providers, an estimated 10 filers, or 7.5 percent, have

[210] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[211] 18 CFR 380.4(a)(15) (2010).

[212] 5 U.S.C. 601–612 (2006).

output of four million MWh or less per year.[213] The Commission does not consider this a substantial number and, in any event, each of these entities may seek waiver of these requirements. The criteria for waiver that would be applied under this rulemaking for small entities is unchanged from that used to evaluate requests for waiver under Order Nos. 888, 889, and 890.

114. As the Commission has previously explained, in determining whether a regulatory flexibility analysis is required, the Commission is required to examine only direct compliance costs that a rulemaking imposes on small business.[214] It is not required to examine indirect economic consequences, nor is it required to consider costs that an entity incurs voluntarily. As discussed above, only public utility transmission providers are required to make filings in compliance with the Proposed Rule. However, to the extent that interconnection customers whose generating facilities are VERs are also impacted by the Proposed Rule, such impacts only apply to those interconnection customers subject to standard generator interconnection agreements for VERs larger than 20 MW,[215] which exceeds the threshold of the small business size standard of the Small Business Administration. Accordingly, the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

X. Comment Procedures

115. 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 January 31, 2011. Comments must refer to Docket No. RM10–11–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

116. 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.

117. Commenters that are not able to file comments electronically must send an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

118. 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.

XI. Document Availability

119. 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 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

120. From FERC'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.

121. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 35

Electric power rates; Electric utilities; Reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 71–7352.

2. Amend § 35.28 as follows:

a. Paragraphs (c)(1) introductory text is revised.

b. Paragraphs (c)(1)(i), (ii), (iii), (c)(1)(v) and (c)(1)(vi) are revised.

c. Paragraphs (c)(3) introductory text and (c)(3)(ii) are revised.

d. Paragraphs (c)(4) is revised.

e. Paragraph (d) is revised.

f. Paragraphs (e)(1)introductory text, (e)(1)(ii) and (e)(2) are revised.

h. Paragraphs (f)(1) introductory text and (f)(1)(i) are revised.

i. Paragraphs (f)(1)(ii) through (f)(1)(iv) are removed and (f)(1)(ii) is reserved.

j. Paragraph (f)(3) is revised.

k. Paragraph (f)(4) is removed.

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(c) * * *

(1) Every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce must have on file with the Commission an open access transmission tariff of general applicability for transmission services, including ancillary services, over such facilities. Such tariff must be the pro forma tariff promulgated by the Commission, as amended from time to time, or such other tariff as may be approved by the Commission consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

(i) Subject to the exceptions in paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(iv), and (c)(1)(v) of this section, the open access transmission tariff, which tariff must be the pro forma tariff required by Commission rulemaking proceedings promulgating and amending the pro forma tariff, and accompanying rates must be filed no later than 60 days prior to the date on which a public utility would engage in a sale of electric energy at wholesale in interstate commerce or in the transmission of electric energy in interstate commerce.

[213] A "small entity" as referenced in the RFA refers to the definition provided in section 3 of the Small Business Act where a firm is "small" if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. Based on the filers of the annual FERC Form 1 and Form 1–F, as well as the number of companies that have obtained waivers, we estimate that 7.5 percent of the filers are "small."

[214] *Credit Reforms in Organized Wholesale Electric Markets,* 133 FERC ¶ 61,060, at P 184 (2010).

[215] Standard generator interconnection agreements and procedures are segmented into large generators which are greater than 20 MW and small generators which are 20 MW or less. This proposed rule applies only to generators in the LGIA category of more than 20 MWs.

(ii) If a public utility owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce, it must file the revisions to its open access transmission tariff required by Commission rulemaking proceedings promulgating and amending the pro forma tariff, pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

(iii) If a public utility owns, controls, or operates transmission facilities used for the transmission of electric energy in interstate commerce, such facilities are jointly owned with a non-public utility, and the joint ownership contract prohibits transmission service over the facilities to third parties, the public utility with respect to access over the public utility's share of the jointly owned facilities must file the revisions to its open access transmission tariff required by Commission rulemaking proceedings promulgating and amending the pro forma tariff pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

* * * * *

(v) If a public utility obtains a waiver of the tariff requirement pursuant to paragraph (d) of this section, it does not need to file the open access transmission tariff required by this section.

(vi) Any public utility that seeks a deviation from the pro forma tariff promulgated by the Commission, as amended from time to time, must demonstrate that the deviation is consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

* * * * *

(3) Every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce, and that is a member of a power pool, public utility holding company, or other multi-lateral trading arrangement or agreement that contains transmission rates, terms or conditions, must have on file a joint pool-wide or system-wide open access transmission tariff, which tariff must be the pro forma tariff promulgated by the Commission, as amended from time to time, or such other open access transmission tariff as may be approved by the Commission consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

* * * * *

(ii) For any power pool, public utility holding company or other multi-lateral arrangement or agreement that contains transmission rates, terms or conditions and that is executed on or before May 14, 2007, a public utility member of such power pool, public utility holding company or other multi-lateral arrangement or agreement that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce must file the revisions to its joint pool-wide or system-wide open access transmission tariff required by Commission rulemaking proceedings promulgating and amending the pro forma tariff pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

* * * * *

(4) Consistent with paragraph (c)(1) of this section, every Commission-approved ISO or RTO must have on file with the Commission an open access transmission tariff of general applicability for transmission services, including ancillary services, over such facilities. Such tariff must be the pro forma tariff promulgated by the Commission, as amended from time to time, or such other tariff as may be approved by the Commission consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

(i) Subject to paragraph (c)(4)(ii) of this section, a Commission-approved ISO or RTO must file the revisions to its open access transmission tariff required by Commission rulemaking proceedings promulgating and amending the pro forma tariff pursuant to section 206 of the FPA and accompanying rates pursuant to section 205 of the FPA in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

(ii) If a Commission-approved ISO or RTO can demonstrate that its existing open access transmission tariff is consistent with or superior to the pro forma tariff promulgated by the Commission, as amended from time to time, the Commission-approved ISO or RTO may instead set forth such demonstration in its filing pursuant to section 206 in accordance with the procedures set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff.

(d) *Waivers.* A public utility subject to the requirements of this section and Order No. 889, FERC Stats. & Regs. ¶ 31,037 (Final Rule on Open Access Same-Time Information System and Standards of Conduct) may file a request for waiver of all or part of the requirements of this section, or Part 37 (Open Access Same-Time Information System and Standards of Conduct for Public Utilities), for good cause shown. Except as provided in paragraph (f) of this section, an application for waiver must be filed no later than 60 days prior to the time the public utility would have to comply with the requirement.

* * * * *

(e) * * *

(1) A non-public utility may submit an open access transmission tariff and a request for declaratory order that its voluntary transmission tariff meets the requirements of Commission rulemaking proceedings promulgating and amending the pro forma tariff.

* * * * *

(ii) If the submittal is found to be an acceptable open access transmission tariff, an applicant in a Federal Power Act (FPA) section 211 or 211A proceeding against the non-public utility shall have the burden of proof to show why service under the open access transmission tariff is not sufficient and why a section 211 or 211A order should be granted.

(2) A non-public utility may file a request for waiver of all or part of the reciprocity conditions contained in a public utility open access transmission tariff, for good cause shown. An application for waiver may be filed at any time.

(f) * * *

(1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard interconnection procedures and agreement and the standard small generator interconnection procedures and agreement required by Commission rulemaking proceedings promulgating and amending such interconnection procedures and agreements, or such other interconnection procedures and agreements as may be required by Commission rulemaking proceedings promulgating and amending the standard interconnection procedures and agreement and the standard small generator interconnection procedures and agreement.

(i) Any public utility that seeks a deviation from the standard

interconnection procedures and agreement or the standard small generator interconnection procedures and agreement required by Commission rulemaking proceedings promulgating and amending such interconnection procedures and agreements, must demonstrate that the deviation is consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending such interconnection procedures and agreements.

(ii) [Reserved]

* * * * *

(3) A public utility subject to the requirements of this paragraph may file a request for waiver of all or part of the requirements of this paragraph, for good cause shown.

* * * * *

Note: The following appendices will not be published in the *Code of Federal Regulations.*

Appendix A: List of Short Names of Commenters on the Federal Energy Regulatory Commission's Notice of Inquiry on Integration of Variable Energy Resources—Docket No. RM10–11–000, January 2010

Short name or acronym	Commenter
A123	A123 Systems, Inc.
AEP	American Electric Power Service Corporation.
Altresco	Altresco Integrated LLC.
American Gas	American Gas Association.
APPA	American Public Power Association.
Argonne National Lab	Argonne National Laboratory.
APS	Arizona Public Service Company.
Avista	Avista Corporation.
AWEA	American Wind Energy Association.
Beacon Power	Beacon Power Corporation.
Ben Carver	Ben Carver.
Bernard Lee	Bernard S. Lee.
Bonneville	Bonneville Power Administration.
BP Energy	BP Energy Company.
BrightSource	BrightSource Energy, Inc.
Brookfield	Brookfield Renewable Power Inc.
California ISO	California Independent System Operator Corporation.
CMUA	Cities of Alameda, Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Corona, Glendale, Gridley, Healdsburg, Hercules, Lodi, Lompoc, Moreno Valley, Needles, Palo Alto, Pasadena, Pittsburg, Rancho Cucamonga, Redding, Riverside, Roseville, Santa Clara, Shasta Lake, Ukiah, and Vernon; the Imperial, Merced, Modesto, and Turlock Irrigation Districts; the Northern California Power Agency; Southern California Public Power Authority; Transmission Agency of Northern California; Lassen Municipal Utility District; Power and Water Resources Pooling Authority; Sacramento Municipal Utility District; the Trinity and Truckee Donner Public Utility Districts; the Metropolitan Water District of Southern California; and the City and County of San Francisco, Hetch-Hetchy.
California PUC	California Public Utilities Commission.
California State Water Project	California Department of Water Resources State Water Project.
CalWEA	California Wind Energy Association.
Calpine	Calpine Corporation.
Cazalet Group	Edward G. Cazalet.
Chelan County PUD	Public Utility District No. 1 of Chelan County, Washington.
Clean Line	Clean Line Energy Partners, LLC.
Clean Urban Energy	Clean Urban Energy, Inc.
CAREBS	Coalition to Advance Renewable Energy through Bulk Storage.
ColumbiaGrid	ColumbiaGrid.
Constellation	Constellation Energy Commodities Group, Inc. and Constellation New Energy, Inc.
Covanta	Covanta Energy Corporation.
Detroit Edison	Detroit Edison Corporation.
Dominion	Dominion Resources Services, Inc.
Duke	Duke Energy Corporation.
EEI	Edison Electric Institute.
ELCON	Electricity Consumers Resource Council.
Entergy	Entergy Services, Inc.
E.ON	E.ON U.S. LLC.
E.ON Climate & Renewables North America.	E.ON Climate & Renewables North America.
EPSA	Electric Power Supply Association.
Exelon	Exelon Corporation.
Federal Trade Commission	Federal Trade Commission.
FirstEnergy	FirstEnergy Affiliates.
FIT Coalition	FIT Coalition.
G&T Cooperative	Associated Electric Cooperative, Inc.; Basin Electric Power Cooperative; Tri-State Gas & Transmission Association, Inc.
Glenn Schleede	Glenn R. Schleede.
Grant PUD	Public Utility District No. 2 of Grant County, Washington.
HDR Engineering	HDR Engineering, Inc of the Carolinas.
Iberdrola	Iberdrola Renewables, Inc.
Idaho Power	Idaho Power Company.
Imperial Irrigation District	Imperial Irrigation District (CA).

Short name or acronym	Commenter
Independent Power Producers Coalition—West.	Arizona Competitive Power Alliance; Colorado Independent Energy Association; Independent Energy Producers Association (California); New Mexico Independent Power Producers Coalition; and the Northwest & Intermountain Power Producers Coalition.
Indicated New York Transmission Owners.	Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power authority; New York Power Authority; New York State Electric & Gas Corporation; Orange and Rockland Utility, Inc.; and Rochester Gas and Electric Corporation.
Invenergy Wind	Invenergy Wind Development LLC.
ISO New England	ISO New England Inc.
ISO/RTO Council	California Independent System Operator; Electric Reliability Council of Texas; ISO New England, Inc.; Midwest Independent Transmission System Operator, Inc.; New York Independent System Operator; PJM Interconnection, L.L.C.; and Southwest Power Pool, Inc.
ITC Companies	ITC*Transmission:* Michigan Electric Transmission Company, LLC; ITC Midwest LLC; and ITC Great Plains, LLC.
Joint Initiative	Joint Initiative Facilitators.
Large Public Power Council	Austin Energy; Chelan County Public Utility District No. 1; Clark Public Utilities; Colorado Springs Utilities; CPS Energy (San Antonio); IID Energy; JEA (Jacksonville, FL); Long Island Power Authority; Lower Colorado River Authority; MEAG Power; Nebraska Public Power District; New York Power Authority; Omaha Public Power District; Orlando Utilities Commission; Platte River Power Authority; Puerto Rico Electric Power Authority; Sacramento Municipal Utility District; Salt River Project; Santee Cooper; Seattle City Light; Snohomish County Public Utility District No. 1; and Tacoma Public Utilities.
LAWP	Department of Water and Power of the City of Los Angeles.
Manitoba Hydro	Manitoba Hydro.
Mark Strauch	Mark Strauch.
MidAmerican	MidAmerican Energy Holdings Company.
Midwest ISO	Midwest Independent Transmission System Operator, Inc.
Midwest ISO Transmission Owners	Ameren Services Company (as agent for Union Electric Company; Central Illinois Public Service Company; Central Illinois Light Co., and Illinois Power Company); City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; (Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company (Minnesota and Wisconsin corporations); Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.
Modesto Irrigation District	Modesto Irrigation District.
Morgan Stanley	Morgan Stanley Capital Group Inc.
M-S-R Public Power Agency	Modesto Irrigation District; City of Santa Clara, California; and City of Redding, California.
NARUC	National Association of Regulatory Utility Commissioners.
NEMA	National Electrical Manufacturers Association and NEMA Energy Storage Council.
National Grid	National Grid USA.
National Hydropower	National Hydropower Association.
NRECA	National Rural Electric Cooperative Association.
Natural Gas	Natural Gas Supply Association.
NaturEner	NaturEner USA, LLC.
Nebraska Power	Nebraska Power Association.
NEPOOL Participants	New England Power Pool Participants Committee.
NV Energy	Nevada Power Company and Sierra Pacific Power Company.
New England States' Committee on Electricity.	New England States' Committee on Electricity.
New York ISO	New York Independent System Operator, Inc.
New York PSC	New York State Public Service Commission.
NextEra	NextEra Energy Resources, LLC.
NERC	North American Electric Reliability Corporation.
NOAA	National Oceanic and Atmospheric Administration.
NorthWestern	NorthWestern Corporation.
Northeast Utilities	Northeast Utilities Service Company.
NREL	National Renewable Energy Research Laboratory's Transmission and Grid Integration Group.
NRG	NRG Energy, Inc.
Opatrny Consulting	Opatrny Consulting, Inc.
Organization of SE Utilities	Georgia Transmission Corporation; Jacksonville Electric Authority; Municipal Electric Authority of Georgia; Orlando Utilities Commission; Progress Energy, Inc.; South Carolina Electric & Gas Corporation; South Carolina Public Service Authority; and Southern Company Services, Inc.
Pacific Gas and Electric	Pacific Gas and Electric Company.
PNNL	Pacific Northwest National Laboratory.
PJM	PJM Interconnection, LLC.
Portland General Electric	Portland General Electric Company.
Powerex	Powerex Corporation.
PSEG Companies	Public Service Electric and Gas Company; PSEG Power LLC; PSEG Energy Resources & Trade LLC.
Public Interest Organizations	Center for Energy Efficiency & Renewable Technologies; Environmental Defense Fund; Fresh Energy; Natural Resources Defense Council; Northwest Energy Coalition; Office of the Ohio Consumers' Counsel; Project for Sustainable FERC Energy Policy; and Western Grid Group.
Public Power Council	Franklin County Public Utility District; PNGC Power; Northwest Requirements Utilities; and Western Montana Gas & Electric Cooperative
Public Service of New Mexico	Public Service Company of New Mexico.

Short name or acronym	Commenter
Puget	Puget Sound Energy, Inc.
SMUD	Sacramento Municipal Utility District.
Salt River Project	Salt River Project Agricultural Improvement and Power District.
San Diego Gas & Electric	San Diego Gas & Electric Company.
Sempra	Sempra Generation.
Six Cities	Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.
Snohomish County PUD	Public Utility District No. 1 of Snohomish County, Washington.
SEIA	Solar Energy Industries Association.
Southern California Edison	Southern California Edison Company.
Southern	Southern Company Services, Inc.
SWTC & AEP	Southwest Transmission Cooperative, Inc. and Arizona Electric Power Cooperative, Inc.
Summit Wind	Summit Wind LLC.
Sunflower and Mid-Kansas	Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC.
Symbiotics	Symbiotics, LLC.
Tacoma Power	City of Tacoma, Department of Public Utilities, Light Division (Washington).
Transmission Access Policy Study Group.	Transmission Access Policy Study Group.
Transmission Agency of Northern California.	Transmission Agency of Northern California.
Turlock Irrigation	Turlock Irrigation District.
University of Delaware	University of Delaware Center for Carbon-Free Power Integration.
US Bureau of Reclamation	United States Bureau of Reclamation.
Utility Economic Engineers	Utility Economic Engineers.
Viridity Energy	Viridity Energy, Inc.
Wärtsilä	Wärtsilä North America.
WECC	Western Electricity Coordinating Council.
WestConnect	Arizona Public Service Company; El Paso Electric Company, Imperial Irrigation District; NV Energy, Public Service Company of Colorado; Public Service Company of New Mexico; Sacramento Municipal Utility District; Southwest Transmission Cooperative, Inc.; Transmission Agency of Northern California; Tri-State Generation and Transmission Association, Inc.; Tucson Electric Power Company and Western Area Power Administration.
Westar	Westar Energy, Inc. and Kansas Gas and Electric Company.
Western Farmers	Western Farmers Electric Cooperative.
Western Grid	Western Grid Group.
Western Power Trading Forum	Western Power Trading Forum.
William Short	William P. Short III & Lisa Linowes.
Wyoming Power Producers	Wyoming Power Producers Coalition.
Xcel	Xcel Energy Services Inc.

Appendix B: Proposed inserts to the Pro Forma Open Access Transmission Tariff

The Commission proposes to amend and/or add the following sections of the pro forma OATT:

a. Table of Contents (Add Section 3.8, Generator Regulation and Frequency Response Service, and Schedule 10, Generator Regulation and Frequency Response Service)

b. Section 3

c. Section 3.8

d. Section 13.8

e. Section 14.6

f. Schedule 10

3 Ancillary Services

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation or Other Sources.

The Transmission Provider is required to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve—Spinning, and (iv) Operating Reserve—Supplemental. The Transmission Customer serving load within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply.

The Transmission Provider is required to provide (or offer to arrange with the local Control Area Operator as discussed below), to the extent it is physically feasible to do so from its resources or from resources available to it, Generator Regulation and Frequency Response Service and Generator Imbalance Service when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer using Transmission Service to deliver energy from a generator located within the Transmission Provider's Control Area is required to acquire Generator Regulation and Frequency Response Service and Generator Imbalance Service, whether from the Transmission Provider, from a third party, or by self-supply.

The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Customer must list in its Application which Ancillary Services it will purchase from the Transmission Provider. A Transmission Customer that exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or an Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved is required to pay for all of the Ancillary Services identified in this section that were provided by the Transmission Provider associated with the unreserved service. The Transmission Customer or Eligible Customer will pay for Ancillary Services based on the amount of transmission service it used but did not reserve.

If the Transmission Provider is a public utility providing transmission service but is not a Control Area operator, it may be unable to provide some or all of the Ancillary Services. In this case, the Transmission Provider can fulfill its obligation to provide Ancillary Services by acting as the Transmission Customer's agent to secure these Ancillary Services from the Control Area operator. The Transmission Customer may elect to: (i) Have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the Control Area operator, or (iii) secure the Ancillary

Services (discussed in Schedules 3, 4, 5, 6, 9 and 10) from a third party or by self-supply when technically feasible.

The Transmission Provider shall specify the rate treatment and all related terms and conditions in the event of an unauthorized use of Ancillary Services by the Transmission Customer.

The specific Ancillary Services, prices and/or compensation methods are described on the Schedules that are attached to and made a part of the Tariff. Three principal requirements apply to discounts for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's system. Sections 3.1 through 3.8 below list the eight Ancillary Services.

3.8 Generator Regulation and Frequency Response Service

Where applicable the rates and/or methodology are described in Schedule 10.

13.8 Scheduling of Firm Point-To-Point Transmission Service

Schedules for the Transmission Customer's Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than *10:00 a.m.* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 10:00 a.m. will be accommodated, if practicable. Hour-to-hour and intra-hour (four intervals consisting of fifteen minute schedules) schedules of any capacity and energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their service requests at a common point of receipt into units of 1,000 kW per hour for scheduling and billing purposes. Scheduling changes will be permitted up to fifteen (15) minutes before the start of the next scheduling interval provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour and intra-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14.6 Scheduling of Non-Firm Point-To-Point Transmission Service

Schedules for Non-Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than *2 p.m.* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 2 p.m. will be accommodated, if practicable. Hour-to-hour and intra-hour (four intervals consisting of fifteen minute schedules) schedules of energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their schedules at a common Point of Receipt into units of 1,000 kW per hour. Scheduling changes will be permitted up to fifteen (15) minutes before the start of the next scheduling interval, provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour and intra-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

SCHEDULE 10

Generator Regulation and Frequency Response Service

Generator Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Generator Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) and/or by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in generation output. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Balancing Authority that performs this function for the Transmission Provider). The Transmission Provider (or the Balancing Authority that performs this function for the Transmission Provider) must offer this service when Transmission Service is used to deliver energy from a generator physically or electrically located within its Balancing Authority Area. The Transmission Customer or generator must either purchase this service from the Transmission Provider or make alternative comparable arrangements, which may include use of non-generation resources or processes capable of providing this service, to satisfy its Generator Regulation and Frequency Response Service obligation. The amount of and charges for Generator Regulation and Frequency Response Service are set forth below. To the extent the Balancing Authority performs this service for the Transmission Provider, charges to the Transmission Customer or generator are to reflect only a pass-through of the costs charged to the Transmission Provider by that Balancing Authority.

Appendix C: Proposed Inserts to the Pro Forma Large Generator Interconnection Agreement

The Commission proposes to amend and/or add the following sections of the pro forma LGIA:

a. Table of Contents (Add Article 8.4, Provision of Data from a Variable Energy Resource)

b. Article 1 (Add definition of Variable Energy Resource)

c. Article 8.4

Article 1 Definition

Variable Energy Resource shall mean a device for the production of electricity that is characterized by an energy source that: (1) Is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator.

Article 8.4 Provision of Data From a Variable Energy Resource

The Interconnection Customer whose Generating Facility is a Variable Energy Resource shall provide meteorological and other operational data to the Transmission Provider to the extent necessary for the Transmission Provider's development and deployment of power production forecasts for Variable Energy Resources. The Interconnection Customer with a Variable Energy Resource having wind as the energy source, at a minimum, will be required to provide the Transmission Provider with site specific meteorological data including: temperature, wind speed, wind direction, and atmospheric pressure. The Interconnection Customer with a Variable Energy Resource having solar as the energy source, at a minimum, will be required to provide the Transmission Provider with temperature, atmospheric pressure, and cloud cover. Additional meteorological data requirements for any Interconnection Customer whose Generating Facility is a Variable Energy Resource will require a showing by the Transmission Provider that such data is needed to develop and deploy a power production forecast for that Variable Energy Resource, or is mutually agreed to by the Interconnection Customer and the Transmission Provider. The exact

specifications of the data to be provided by the Interconnection Customer to the Transmission Provider shall be made taking into account the size and configuration of the Variable Energy Resource, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area.

The Interconnection Customer whose Generating Facility is a Variable Energy Resource shall submit operational data to the Transmission Provider regarding all unanticipated outages that reduce the generating capability of the Variable Energy Resource by 1 MW or more for 15 minutes or more.

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